Oct 22. 78. Arg^d N. H. Swayne

7 Otto 624

Oct. T. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~289~~ 86

EUGENE HOWLAND, APPELLANT,

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 25, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 289.

EUGENE HOWLAND, APPELLANT,

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna	12	6
Appearance	14	6
Answer	15	6
Replication	35	13
Hearing, &c	38	15
Hearing concluded and cause held under consideration	39	15
COMPLAINANT'S TESTIMONY.		
Deposition of Richmond W. Howland	41	16
Horatio T. Taylor	83	32
William H. Jenks	95	37
Dr. M. R. Teegarden	104	41
Lucas Bradley	111	44
James H. Kelly	121	48
Thomas H. Davis	129	51
Complainant's Exhibit A, power of attorney to R. W. Howland	139	56
B	143	57
C	146	59
D, mortgage from defendants to Isaac Taylor	149	60
Deposition of Alvin R. Burdick	154	62
Albert R. Dickey	159	64
Achas P. Dutton	165	66
John W. English	170	68
Horatio T. Taylor (recalled)	189	76
Ellen M. Howland	199	81
Silas F. Lefler	208	85
Complainant's Exhibit E, deed from Daniel P. Rhodes and wife to Isaac Taylor	216	88
F, agreement between Clement and Isaac Taylor	218	89
G, deed from Eugene Howland and wife to J. Wrattan	221	91
H, deed from J. Wratten and wife to M. B. Throup	223	92
I, deed from Isaac Taylor to M. B. Throup	225	93

	Original.	Print.
Deposition of Silas F. Lefler (recalled)	230	95
Deposition of Albert R. Dickey (recalled)	236	97
DEFENDANTS' TESTIMONY.		
Deposition of Elbridge G. Huggins	239	99
John H. Palmeter	247	102
Benjamin F. Weeks	250	103
Alexander O. Burch	254	105
John Tapley	262	108
Henry T. Fuller	265	110
Warren J. Durham	276	114
Thomas J. Emerson	279	115
Hermon Warner	283	117
George Ball	289	120
Frederick W. Bruce	295	123
James T. Elliott	301	125
John Kranz	338	142
Albert G. Knight	340	143
George Q. Erskine	347	146
Defendants' offer of documentary evidence	349	147
Complainant's objection to same, &c	350	148
Stipulation as to documentary evidence	351	148
Deposition of John Elkins	353	148
Henry S. Durand	357	150
Charles L. Bunce	369	155
Lucius S. Blake	378	159
Lucius S. Blake (recalled)	496	210
Richmond W. Howland	427	180
George W. Slawson	450	191
Frederick W. Bruce (recalled)	452	192
Lucius S. Blake (in rebuttal)	457	194
Lewis C. Osborn	464	197
James T. Elliott (recalled)	465	198
Thomas H. Davis	468	199
William S. Buffham	471	200
George Q. Erskine (recalled)	473	201
Adams C. Sandford	476	202
Elbert O. Hand	484	205
John Tapley (recalled)	488	207
F. W. Bruce (recalled)	491	208
Defendants' notice to take deposition of complainant	501	212
Deposition of Eugene Howland	503	212
Defendants' Exhibit No. 1, deed from Isaac Taylor and wife to C. Clement	517	217
2, deed from sheriff of Racine County to Isaac Taylor	520	219
3, deed from sheriff of Racine County to D. P. Rhodes	525	221
4, deed from D. P. Rhodes and wife to Isaac Taylor	535	225
5, deed from Racine County to D. P. Rhodes	537	226
6, deed from Racine City to Isaac Taylor	540	227
7, deed from Racine City to Isaac Taylor	544	229
8, judgment-roll of foreclosure, suit Isaac Taylor *vs.* Eugene Howland et al	547	230
9, judgment-roll, Wiltse et al. *vs.* Eugene Howland et al	624	265
10, deed from Isaac Taylor and wife to defendants	661	280
11, notes of defendants to Isaac Taylor, $7,500	664	282
12, statement of taxes on lot in suit	667	283

	Original.	Print.
Defendants' Exhibit No. 13, estimate of cost of repairs on property in suit	497	210
14, statement of repairs to property in suit	421	177
15, defendants' account-book offered by complainant	Separate.	
16, statement of rents from property in suit	330	138
17, statement of taxes paid on property in suit	334	141
18, statement of insurance paid on property in suit	335	141
Deed from Throup and complainant to Isaac Taylor	668	284
Decree of dismissal of bill	671	285
Appeal to Supreme Court	671	285
Bond on appeal	672	285
Clerk's certificate	675	286
Citation	676	287

1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district, on the first Monday (being the fifth day) of October, A. D. 1874—present and presiding the honorable Thomas Drummond, circuit judge—

Among other, the following proceedings were had, to wit:

EUGENE HOWLAND
against
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Be it remembered that heretofore, to wit, on the first day of July, A. D. 1873, came the above-named complainant, Eugene Howland, by his solicitors, Mess'rs Palmer, Hooker & Pitkin, and filed his bill of complaint against the above named defendants, as follows:

Bill of complaint.

United States circuit court, eastern district of Wisconsin. In equity.

2 To the judges of the circuit court of the United States for the eastern district of Wisconsin:

Your orator, Eugene Howland, of Watertown, in the State of New York, and who is a citizen of the State of New York, complaining of Lucius S. Blake and James T. Elliott, of the city of Racine, in the eastern district of Wisconsin, and who are citizens of the State of Wisconsin, shows unto your honors that on the twenty-first day of October, A. D. 1857, being seized in fee of the premises hereinafter mentioned and described, and having occasion to borrow the sum of seven thousand dollars, your orator applied to one Isaac Taylor, of the said city of Racine, to lend him that sum upon the security of the said premises; which the said Isaac Taylor consented to do, and accordingly advanced the said sum of seven thousand dollars to your orator; and that in order to secure the repayment thereof on the first day of January, A. D. 1860, with interest at the rate of ten per cent. per annum, your orator executed and delivered to the said Isaac Taylor an indenture of mortgage, bearing date on the said twenty-first day October, A. D. 1857, which was made between your orator of the one part and the said Isaac Taylor of the other part, and by the said indenture your orator, for and in consideration of

3 the said sum of seven thousand dollars to him in hand paid by the said Isaac Taylor, did grant, bargain, and convey unto the said Isaac Taylor, his heirs and assigns, the premises above mentioned, situated in the city and county of Racine, and State of Wisconsin, and described in the said mortgage as follows, viz: All those two certain pieces or parcels of land situate in the first ward of the said city of Racine, known and described as follows: Lots No. four (4) and twelve (12) in block No. eighteen (18), as the same are marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine; to have and to hold the said premises unto the said Isaac Taylor, his heirs, ex-

ecutors, administrators, and assigns, subject to a proviso or condition of redemption by your orator on the payment of the said sum of seven thousand dollars, with interest at ten per cent., on the first day of January, A. D. 1860; which mortgage was duly recorded in the office of the register of deeds of said county of Racine on the fifth day of November, A. D. 1857, in volume Y of mortgages, on pages 141, 142, and 143.

4 And your orator further shows unto your honors that after the execution and delivery of the said mortgage as aforesaid the said Isaac Taylor, by deed duly executed, released said lot No. four (4) from the lien of said mortgage and accepted the remainder of the said mortgaged premises as his security.

And your orator further shows unto your honors that at the time of giving said mortgage he was erecting a valuable building upon said lot No. twelve (12), and that he borrowed said sum of seven thousand dollars to be used in the completion of said building, and that the same was so used and not otherwise, and that the entire cost of the construction of said building exceeded the sum of twenty-four thousand dollars.

And your orator further shows unto your honors that upon the completion of said building he rented the several rooms and apartments thereof to sundry persons, at an annual rent, in the aggregate, of upwards of twenty-two hundred dollars.

And your orator further shows unto your honors that soon after the said building was completed and leased as aforesaid he entered into an agreement with the said Isaac Taylor whereby he, said Isaac Taylor, was to take possession of said building and mortgaged premises and to receive the rents thereof, and to apply said rents to the payment of the interest upon said mortgaged debt, and to the payment of the principal thereof, and was to retain possession thereof until the net proceeds of

5 the rents should be sufficient to satisfy said mortgage-debt; that in pursuance of said agreement your orator surrendered and delivered the possession of said building and mortgaged premises to the said Isaac Taylor; that said Taylor entered into possession thereof, under and in pursuance of said agreement, and thereupon took and received the rents thereof, to be applied upon the said mortgaged debt in pursuance of said agreement.

And your orator further shows unto your honors that on or about the 10th day of August, A. D. 1861, the said Isaac Taylor, being in possession of said premises under said agreement, instituted a suit in the circuit court of the State of Wisconsin, in and for the said county of Racine, against your orator and others for the foreclosure of said mortgage for the payment of the amount then due and unpaid upon said mortgage, which amount the said Isaac Taylor claimed in his complaint in that suit to be "about the sum of seven thousand dollars"; that judgment of foreclosure and sale was rendered in said suit on or about the 26th day of February, A. D. 1862, for the sum of nine thousand and seventy dollars and two cents; that on the 19th day of June, A. D. 1862, pursuant to the judgment in said suit, said lot No. twelve and said building constituting the mortgaged premises were sold by the sheriff of said county of Racine for the sum of nine thousand and three hundred dollars, to the

6 said Isaac Taylor; and that thereupon the said sheriff executed and delivered to him, the said Taylor, a deed in the usual form of sheriff's deed, which deed was recorded in the office of the register of deeds of said county of Racine, on the 6th day of October, A. D. 1862, in volume 43 of deeds, on pages 145 and 146.

And your orator further alleges that after the commencement of said suit, he entered into an agreement with the said Isaac Taylor, where-

by he, said complainant, waived and agreed to forego all defense and delay in the prosecution of said suit, and to waive and forego all right of appeal from the judgments to be rendered in said suit, and to allow said Taylor to remain in possession of said premises, and whereby, in consideration thereof, the said Isaac Taylor agreed to continue in possession of said premises, and to bid in the said premises at the sheriff's sale, to take a conveyance thereof from the said sheriff, and to hold the same and the possession of said premises merely as security for the payment of said mortgage debt, to receive and apply the rents of said premises to the payment of the interest and principal of said mortgage-debt until the whole debt should be paid, and upon the full payment of said mortgage-debt to reconvey the said premises to your orator.

And your orator further shows unto your honors that said suit was prosecuted to final judgment, that said sale was made by said sheriff, and that said sheriff's deed was executed in pursuance of said
7 last-mentioned agreement, and not otherwise.

And your orator further shows unto your honors that said Isaac Taylor remained in possession of said premises and collected and applied said rents to the said mortgage-debt, pursuant to the terms of said last-mentioned agreement, until on or about the eighteenth day of April, A. D. 1863; that a short time prior to said eighteenth day of April, A. D. 1863, said Taylor being in need of the money so due him from your orator as aforesaid, applied to your orator to procure some other person to advance the same to him and to take a conveyance of the said mortgaged premises as security for its repayment; that your orator thereupon informed the said defendants of the terms and conditions upon which said Taylor held said premises, and requested them to take a conveyance thereof from said Taylor and hold the same upon the same terms and conditions upon which said Taylor then held said premises, which the said defendants thereupon promised to do; that in pursuance of said promise, and the agreement hereinafter set forth, on or about the said eighteenth day of April, A. D. 1863, said Taylor conveyed said mortgaged premises to said defendants by an indenture in the form of an absolute conveyance, but which conveyance was in fact given as a mortgage; that at the time of making said conveyance an agreement
8 was made between the said Taylor and the said complainant and the said defendants, whereby the said defendants agreed to pay said Taylor the said mortgaged debt, and to take possession of the said mortgaged premises, and to receive the rents thereof, and to apply said rents to the payment of the said debt, and to retain possession thereof until the nett proceeds of the rents should be sufficient to satisfy said mortgaged debt, and to keep and render to your orator a full and accurate account of the rents so received by them, and to convey the said premises to your orator when the receipts from such rents should be sufficient to reimburse the said defendants for the moneys paid out by them on account of said mortgage-debt and on account of said premises, and whereby said Taylor was to convey said premises to said defendants, as the same were conveyed as above stated, and to deliver the possession thereof to said defendants as security for the moneys so to be advanced by the said defendants; that in pursuance of said last-mentioned agreement the possession of the said mortgaged premises was thereupon delivered to the said defendants; that said defendants entered into possession thereof under and in pursuance of said agreement, and thereupon took and received the rents thereof, and have continued to receive the rents thereof from the said eighteenth day of April, A. D. 1863,
9 to the present time; that said defendants, after said 18th day of

April, 1863, from time to time, paid to said Taylor, for and on behalf of your orator, the said mortgage-debt, amounting to upwards of seven thousand dollars, but the exact amount of which your orator is unable to state; that said defendants have received rents from said building amounting to about the sum of two thousand dollars per year ever since they took possession of said premises as aforesaid; that the aggregate amount of the rents so received by them greatly exceeds the aggregate amount of the said mortgage-debt with interest, and all moneys paid out by said defendants for taxes, insurance, and repairs upon said premises, and that the excess of the said receipts for rents over and above all moneys paid out by said defendants on account of said mortgage-debt and on account of said mortgaged premises, with interest thereon, is several thousand dollars, but the true amount thereof your orator is unable to state.

And your orator further shows unto your honors that he has demanded of the said defendants that they render to him a statement and account of the moneys received by them for rents as aforesaid, and of the moneys paid out by them on account of the said mortgage-debt, and on account of taxes, repairs, and insurance upon the said
10 mortgaged premises, and of all other moneys paid out by them on account of said premises, but that the said defendants have refused and still refuse to do so.

And your orator further shows unto your honors that he has demanded of the said defendants that they convey to him the said mortgaged premises in compliance with their said agreement, but they have refused and still refuse to do so.

And your orator further shows unto your honors that the said defendants pretend and give out that they purchased the said premises from said Taylor absolutely, and that the said conveyance from him to them was absolute and not as a security, and that they never promised or agreed to convey said premises to your orator; whereas your orator charges the contrary of such pretenses to be the truth; all which actings, doings, and pretenses of the said defendants are contrary to equity and good consicience, and tend to the manifest wrong, injury, and oppres'ion of your orator.

To the end, therefor', that the said defendants may respectively full, true, direct, and perfect answers make, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid (your orator hereby wa'ving the necessity of the answer of said defendants being put in under the oaths of said defendants, or the oath of either of them), and that as fully
11 and particularly in every respect as if the same were herein again repeated and they thereunto particularly interrogated, and that an account may be taken by and under the decree and direction of this honorable court of the amount of money paid out by said defendants on account of said mortgage-debt and of the said mortgaged premises, as well as of the moneys received by the said defendants from the rents of the said premises; and that your orator may be at liberty to redeem the said mortgaged premises upon payment of what, if anything, shall be found to be due the said defendants, which your orator hereby offers to pay; and that the said defendants may be decreed to pay unto your orator what, if anything, shall be found due your orator from the said defendants on such accounting, and that the said defendants may be decreed to surrender and deliver up the possession of the said mortgaged premises to your orator free and clear from all incumbrances done by them or either of them, or by any one claiming by, from, or under them, or either of

them, and that they may be ordered to acknowledge satisfaction of the said mortgage-debt, and to reconvey the said mortgaged premises to your orator;

And that your orator may have such other and further relief in the premises as the nature of the case may require and to your honors may seem meet, may it please your honors to grant unto your orator
12 the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the said Lucius S. Blake and James T. Elliott, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

And your orator shall ever pray.

PALMER, HOOKER & PITKIN,
Complainants' Solicitors.

H. L. PALMER,
Of Counsel.

Whereupon a subpœna issued, returnable the first Monday of August next, as follows:

Subpœna.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Lucius S. Blake & James T. Elliott, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery, in and for the dis-
13 trict aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Eugene Howland, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Lucius S. Blake & James T. Elliott, if to be found in his district, and due return thereof make.

Witness the honorable Nathan Clifford, first associate justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this first day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

EDWARD KURTZ,
Clerk.

PALMER, HOOKER & PITKIN, *Solicitors.*

It is ordered, by our said court, that the said Lucius S. Blake & James T. Elliott, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

Return.

Subpœna returned: "Served this subpœna on L. S. Blake by
14 showing to him the original, & giving to him, personally, a true copy on the 3d day of July, 1873; and served on J. T. Elliott, by showing to him the originally, & delivering to him, personally, a true copy on the 5th day of July, 1873.

"C. S. HAMILTON, *Marshal*,
"By F. SCHNEIDER, *Deputy*.

"Fees, $6.30."

Appearance.

JULY 7, 1873.—This day came the defendants, by their solicitors, Mess'rs Fish & Lee, and filed their appearance, as follows:

In the circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND, COMPLAINANT,
against
LUCIUS S. BLAKE AND JAMES T. ELLIOTT,
defendants.

Now come the said defendants, by Fish and Lee, their solicitors, and enter their appearance in the above-entitled cause, and do hereby give notice thereof.

Dated July 5th, 1873.

FISH & LEE,
Def'ts' Solicitors, Racine, Wisconsin.

Rule to plead.

AUGUST 4, 1873.—"On motion of Palmer, Hooker & Pitkin, complainant's solicitors, it is ordered that the defendants plead, an-
15 swer, or demur to the complainant's bill of complaint on file, on or before the first Monday of September next; or, in default thereof, the bill will be taken as confessed."

AUGUST 28, 1873.—This day came the defendants, by their solicitors, and filed their answer, as follows:

Answer.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

In equity.

To the judges of the circuit court of the United States for the eastern district of Wisconsin, in chancery sitting:

The joint and several answer of Lucius S. Blake and James T. Elliott, defendants, to the bill of complaint of Eugene Howland, exhibited and filed in this court against these defendants, the said Lucius S. Blake and James T. Elliott.

These defendants, now and hereafter at all times saving and reserv

ing to themselves, and each of them, all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are severally advised is material or necessary for them, or either of them, to
16 make answer unto, they jointly and severally answer and say:

These defendants admit that on the 21st day of October, A. D. 1857, the complainant, Eugene Howland, held the legal title to the lands and premises in complainant's said bill of complaint described; but these defendants, upon their information and belief, aver and allege that he so held such legal title in trust for, and for the benefit of, one Richmond W. Howland (and not otherwise), then and now a resident of Racine, in the eastern district of Wisconsin, and a citizen of the State of Wisconsin; and that he so held the same upon some understanding or agreement with the said Richmond W. Howland, of the nature of which these defendants have no knowledge or information sufficient to form a belief. But these defendants say that as to whether said complainant, on the date aforesaid, or at any other time, applied to one Isaac Taylor to lend to him the sum of seven thousand dollars, or any other sum, upon the security of said premises; or as to whether the said Isaac Taylor consented thereto, and accordingly advanced said or any other sum to said complainant; or as to whether or not said complainant, to secure the repayment of said or any other sum of money,
17 on the first day of January, A. D. 1860, or at any other time, executed and delivered to the said Isaac Taylor an indenture of mortgage upon said premises; or as to whether or not said mortgage was duly recorded in the office of the register of deeds of the county of Racine, as in complainant's said bill of complaint contained and alleged, these defendants have no knowledge or information thereof sufficient to form a belief; and therefore neither admit nor deny the same, but leave said complainant to make such proof in reference thereto as he may be advised.

And these defendants, further answering, allege and say that, as to whether or not, after the execution and delivery of the mortgage mentioned in said bill of complaint, or at any other time, the said Isaac Taylor released any portion of said premises from the lien of said mortgage and accepted the remainder of the said mortgaged premises as security, these defendants have no knowledge, and are not informed save by complainant's said bill of complaint, and therefore deny the same.

And these defendants, further answering, say that they have no knowledge, and are not informed save by complainant's said bill
18 of complaint, as to whether or not, at the time of the giving of said mortgage, said complainant was erecting a valuable building upon said premises or any part thereof, nor as to whether or not said complainant borrowed said sum to be used in the completion of such building, nor as to whether or not the same was so used, but these defendants deny that the cost of the construction of such building, if the same was erected, exceeded the sum of twenty-four thousand dollars. And these defendants, upon their information and belief, aver and allege that if a building was being erected, as stated in complainant's said bill of complaint, the same was the property of and erected for the said Richmond W. Howland, and not the complainant or any other person.

And these defendants, upon their information and belief, deny that upon the completion of said building the complainant rented the several rooms and apartments thereof, as stated in said bill of complaint, but these defendants say that, as they are informed and believe, and therefore

allege, that said building, if erected, was, upon the completion of the same, rented and let to sundry persons by the said Richmond W. Howland, and not said complainant, for the benefit and use of himself,
19 the said Richmond W. Howland, notwithstanding the leases thereof might have been in the name of the said complainant, as lessor, but that if so made it was in pursuance of an express understanding and agreement had between said complainant and the said Richmond W. Howland, whereby the rents and profits thereof were for the use & benefit of the said Richmond W. Howland, but the terms and conditions whereof are unknown to these defendants.

And these defendants, further answering, upon their information and belief, deny that soon after the completion of the building mentioned in said bill of complaint, or at any other time, the said complainant entered into an agreement with the said Isaac Taylor, whereby he, the said Isaac Taylor, was to take possession of such building and said mortgaged premises, or to receive the rents and profits thereof, or that he was to retain possession thereof until the net proceeds of the rents should be sufficient to satisfy said alleged mortgage debt, or that said Taylor went into possession thereof pursuant to said or any such agreement, or that he thereupon took and received the said rents to be applied upon such debt, in pursuance of such or any such agreement as alleged in said bill of complaint.

20 And these defendants, further answering, admit that, as they are informed by the public records of the county of Racine, in said State of Wisconsin, the said Isaac Taylor, at or about the time stated in said bill of complaint, did institute a suit in the circuit court for the county of Racine against said complainant and others for the foreclosure of a certain mortgage, but that as to whether said suit was so instituted for the foreclosure of the mortgage mentioned and described in said bill of complaint these defendants have no knowledge, and are not informed save by the said bill of complaint. And these defendants deny, upon their information and belief, that judgment of foreclosure and sale was rendered, and the mortgaged premises sold thereunder, or that a deed thereof was executed by the then sheriff of said county, as alleged in said bill of complaint, except as hereinafter stated.

And these defendants, further answering, deny that at the time mentioned in said bill of complaint, or that at any other time, as they are informed and believe, said complainant entered into an agreement with said Isaac Taylor whereby he, said complainant, agreed to forego
21 or waived all defence and delay in the prosecution of said foreclosure suit, or the suit mentioned in said bill of complaint, or to waive and forego all right of appeal therein, or that in consideration thereof, or that upon any other consideration, the said Isaac Taylor agreed to continue in possession of said premises, or to bid in the said premises at sheriff's sale, or to take a conveyance thereof and hold the same merely as security for the payment of said alleged mortgage-debt; and these defendants further deny that said Isaac Taylor thereby agreed, or that he at all agreed, to receive and apply the rents of said premises to the payment of the interest and principal of said alleged mortgaged debt until the whole should be paid, or to reconvey the said premises or any part thereof upon full payment thereof, as alleged in said bill of complaint.

And these defendants, further answering, deny that said suit mentioned in complainant's bill of complaint was prosecuted to judgment and sale, or that the sheriff's deed therein charged to have been executed was executed, in pursuance of the pretended agreement set out in

said bill of complaint or of any other agreement, as in said bill of complaint alleged.

22 And these defendants, further answering, upon their information and belief, deny that said Taylor remained in possession or collected or applied the rents of said premises in pursuance of the pretended agreement mentioned in said bill of complaint, as is therein charged.

And these defendants, further answering, deny that a short time before said 18th day of April, A. D. 1863, or at any other time, said Taylor was in need of the money upon the mortgage-debt mentioned in said bill of complaint, or that he applied to the said complainant to procure some other or any person to advance the same or any part thereof and take a conveyance of said mortgaged premises, in said bill of complaint mentioned, as security for its repayment; or that these defendants were thereupon informed by the said complainant or by any other person or persons of the terms and conditions upon which said Taylor held the same; or that these defendants were ever requested by the said complainant or any person to take a conveyance thereof and hold the same upon the same terms and conditions upon which said bill of complaint charges said Taylor then held said premises, or upon any other

23 terms, except as hereinafter stated, or that these defendants thereupon or at any time promised to take or hold said premises upon said or any terms, save as hereinafter stated.

And these defendants, further answering, admit that at the time stated in said bill of complaint, to wit, on the 18th day of April, A. D. 1863, said Taylor conveyed to these defendants the said premises by an indenture in form of an absolute conveyance, but these defendants deny that said indenture was in fact given as a mortgage, but on the contrary thereof these defendants aver and allege that said indenture was and is what the same purports to be, an absolute deed of conveyance in fee-simple of said premises, as hereinafter more fully stated.

And these defendants, further answering, deny that at the time of making said conveyance, or at any other time, the said Isaac Taylor and the said complainant and these defendants, or either of these defendants, entered into an agreement whereby these defendants agreed to pay to said Taylor the mortgage-debt mentioned in said bill of complaint, or to take possession of said premises & to receive the

24 rents and profits thereof and apply the same to the payment of said debt, or until the net proceeds of the rents should satisfy said mortgage debt, or to keep or render to the said complainant full and accurate or any account whatever of the rents received by these defendants, or to convey said premises to the said complainant when the receipts from such rents should be sufficient to reimburse them for the moneys paid out by these defendants on account of or for said premises, or at any other time, or that said Taylor was at any time to convey or did convey said premises or deliver possession thereof to these defendants pursuant to such or any agreement whatever other than said deed of conveyance.

And these defendants, further answering, admit that they have received the rents of said premises since the time mentioned in said bill of complaint, to wit, the eighteenth day of April, A. D. 1863, to the present time, but these defendants deny that they have received the same under or in pursuance of any agreement in complainant's said bill of complaint mentioned or set forth, but, on the contrary thereof,

25 these defendants allege that they received the rents of said pre-

mises as sole owners thereof, and not otherwise, and as they had good and lawful right to do.

And these defendants, further answering, deny that they have at any time paid to the said Isaac Taylor the mortgage-debt or any part thereof mentioned in said bill of complaint as the same is therein charged, and further deny that they have paid to said Taylor any moneys on account of said premises, except as hereinafter expressly alleged.

And these defendants, further answering, admit that they have received rents from the building upon the premises in said bill of complaint mentioned, to a considerable amount, but these defendants deny that the aggregate amount of rents so received by them greatly or at all exceeds or equals the aggregate amount of the said mortgage-debt with interest and all moneys paid out by defendants for taxes, insurance, and repairs upon said premises.

And these defendants, further answering, deny that at any time at or before the exhibiting of his said bill of complaint, said complainant or any other person demanded of these defendants or either of them, that they or either of them should render to him a statement or
26 account of the moneys received of them for rents of said premises, or of the moneys by them paid out on account of taxes, repairs, or insurance, or of any other moneys expended by them on account of said premises. And these defendants deny that the said complainant or any other person, at any time at or before the exhibiting of his said bill of complaint, demanded of these defendants or either of them that they convey to him the said premises or any part or parcel thereof.

And these defendants, further answering, allege and aver, that on or about the twenty-first day of October, A. D. eighteen hundred and fifty-seven, the said complainant, by his then attorney, Richmond W. Howland, aforesaid, made, executed, and delivered to the said Isaac Taylor a certain indenture of mortgage upon said premises in said bill of complaint described, dated on that day, given to secure the repayment to the said Taylor of the sum of seven thousand dollars, and containing the usual covenants and conditions; but these defendants say that they have been informed and believe, and therefore allege, that at the time aforesaid and until the execution of the tax conveyances hereinafter mentioned, the said complainant held the title to said mortgaged
27 premises in his own name, but always in trust for and for the benefit of the said Richmond W. Howland.

And these defendants, further answering, allege that afterwards, to wit, about the month of September, A. D. 1861, a suit was instituted in the circuit court in and for Racine County, aforesaid, for the foreclosure of said mortgage by the said Isaac Taylor as plaintiff against the said complainant and others as defendants; that such proceedings were thereafter had in said foreclosure suit, that on the 26th day of February, A. D. 1862, judgment of foreclosure and sale in due form of law was rendered in said action; and that on the nineteenth day of June, A. D. 1862, the said premises, to wit: Lot No. twelve (12), in block number eighteen (18), according to the original plat of Racine, was sold by the then sheriff of said county of Racine upon said foreclosure-judgment to the said Isaac Taylor, at and for the sum and price of nine thousand three hundred dollars, all of which by the judgment-roll in said foreclosure suit and the report of sale of the sheriff therein, to which these defendants pray leave to refer, will fully appear.

And these defendants, further answering, allege and aver that
28 immediately upon the making and completion of said sale the then sheriff of Racine County, to wit, one Horatio T. Taylor as

such sheriff, executed and delivered to the said Isaac Taylor a good and sufficient deed of said premises so purchased by him at said sale, whereby and by virtue whereof, as these defendants are informed and believe true, the said Isaac Taylor became the sole and absolute owner of the premises so sold as aforesaid, except as to the titles hereinafter named, held by one Daniel P. Rhodes.

And these defendants, further answering, allege and aver that as they are informed by the public records of conveyances in the county of Racine, on or about the 15th day of November, A. D. 1859, the city of Racine, by an indenture in the usual form of a tax-deed, conveyed said lot No. twelve (12) to the said Isaac Taylor, upon the city taxes, interest, and charges thereon for the year 1855, which conveyance is recorded in the office of register of deeds of the county of Racine aforesaid, in volume 40 of deeds, on page 240.

And these defendants, further answering, allege that they are likewise informed and believe true that on the day last aforesaid the city of Racine, aforesaid, by another indenture in like form of tax-deed,
29 conveyed said parcel of land to the said Isaac Taylor, for the taxes, interest, and charges due and unpaid thereon for the year 1856, which last conveyance is of record in said register's office, in volume 40 of deeds, page 241.

And these defendants, further answering, upon like information and belief, allege that on the same day the State of Wisconsin, and the county of Racine aforesaid, by an indenture in due form of tax-deed for State and county taxes, conveyed the said parcel of land to one Daniel P. Rhodes, then and now of Cleveland, in the State of Ohio, for the taxes, interest, and charges due and unpaid to the State of Wisconsin and to the county of Racine for the year 1855, which last-mentioned conveyance is recorded in the office of the register of deeds aforesaid in volume 40 of deeds, on page 243.

And these defendants, further answering, allege and aver that as they are informed by the records of said circuit court in and for the county of Racine, and believe true, on or about the twenty-third day of April, A. D. 1858, in an action then and theretofore pending in said court against the said complainant and others, as defendants, at the suit of Stephen Wiltsie and Peter Hettrick, then of the city of Racine, in the State
30 of Wisconsin, as plaintiffs, which action was brought to maintain and enforce a lien upon said parcel of land and the building erected thereon pursuant to the provisions of the Revised Statutes of the State of Wisconsin entitled "Of the lien of mechanics and others," a judgment was rendered in favor of the said parties plaintiff against the complainant and another, defendants, whereby it was among other things adjudged and decreed that the plaintiffs recover of the defendants therein the sum of six hundred and twenty $\frac{13}{100}$ dollars damages and costs of suit; and whereby it was further adjudged and decreed that the same was a lien upon the building upon said parcel of land, and also upon all the right, title, and interest of the said complainant in this cause in and to the said parcel of land from and after the 27th day of March, A. D. 1857, and that said building and the interest of said complainant in said parcel of land be sold according to law and the provisions of said statute in such case made and provided.

And these defendants, further answering, allege that in pursuance of such judgment the said parcel of land and building were sold by the
31 then sheriff of Racine County to the said Daniel P. Rhodes on the 22d day of May, 1860, for the sum of one thousand dollars, and on the same day the said sheriff executed and delivered to the said Rhodes a

deed of the premises so sold pursuant to law and the practice of said court, which deed is recorded in the office of register of deeds for said county of Racine, and was so recorded on said last-mentioned date, in volume 43 of deeds, on page 57; and that on the eighth day of August, A. D. 1860, the circuit court for the county of Racine aforesaid, by its order made in said last-mentioned suit, confirmed said sale in all respects, all of which, by the judgment-roll and papers in said suit on file in the office of the clerk of the circuit court for the county of Racine aforesaid, will fully appear, and to which these defendants pray leave to refer.

And these defendants, further answering, aver and allege that, as they are informed and believe true, on or about the 23d day of July, A. D. 1862, the said Daniel P. Rhodes, by a deed of quitclaim in the usual form, granted, bargained, and conveyed to the said Isaac Taylor all his right, title, and interest in said parcel of land, which deed was duly executed and acknowledged, and was at or about said date recorded in the office of said register of deeds, in volume 43 of deeds, page 60.

32 And these defendants, further answering, allege and aver that on said 18th day of April, A. D. 1863, the said Isaac Taylor held said parcel of land and the legal and equitable estate therein, and was in possession thereof wholly in his own right, and not otherwise, by virtue of the several conveyances hereinbefore mentioned, and that upon said day and while the said Taylor so held said parcel of land these defendants purchased from, and the said Taylor conveyed to, these defendants the said parcel of land, to wit, lot twelve in block eighteen, according to the original plat of Racine aforesaid, for the sum of ten thousand dollars, of which sum these defendants at the same time paid to the said Taylor two thousand five hundred dollars, and the balance of said sum of ten thousand dollars, to wit, seven thousand five hundred dollars, was secured to be paid to the said Taylor by the ten certain promissory notes of these defendants, for seven hundred and fifty dollars each, one of which notes was due and payable at the end of six months from said date and one at the end of each succeeding six months thereafter, and by a mortgage conditioned for the payment of said notes and otherwise in the usual form upon the premises so

33 purchased by these defendants, all of which notes, with the interest, due and payable thereon, these defendants have fully paid.

And these defendants, further answering, aver and allege that they purchased said parcel of land upon the terms hereinabove expressly alleged, and not otherwise, and that, save as informed by complainant's said bill of complaint, they have no knowledge or information of any agreement or understanding whatever between the said Taylor and said complainant or any other person; and that at the time these defendants purchased said parcel of land they had no notice whatever of the pretended agreement between said Taylor and said complainant, set forth in said bill of complaint, or of any agreement or understanding whatsoever between said Taylor and said complainant or any other person relative to said parcel of land, other than appears by the several conveyances hereinabove set forth.

And these defendants further allege that upon their purchase of said premises as aforesaid, to wit, on the 18th day of April, 1863, they entered into the possession of said premises under claim of absolute title acquired by them as aforesaid from said Taylor, exclusive of any other right, founding such claim upon their deed of conveyance from

34 said Taylor of said premises, and that ever since the said 18th day of April, 1863, and for more than ten years next prior to the exhibiting of plaintiff's said bill of complaint, defendants have contin-

ually occupied and possessed said premises under said deed of conveyance and claim of title, whereby the defendants insist and allege that the complainant's alleged cause of action and claim to said premises are barred by the statute of limitations.

And these defendants, further answering, allege and aver that the said complainant, nor the said Richmond W. Howland, nor any person for them, has ever claimed or pretended, until subsequently to the filing of complainant's said bill of complaint, that any understanding or agreement existed between the said Taylor (or between these defendants) and the said complainant, whereby said premises were to be held by the said Taylor or by these defendants or any other person for the said complainant, or that the same were ever to be reconveyed to the said complainant upon any terms or conditions whatsoever.

Without this, that any other matter or thing material or necessary for these defendants or for either of them to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed
35 or avoided, traversed or denied, is true to the knowledge, information, or belief of these defendants.

All which matters and things these defendants are at all times ready to aver, maintain, and prove as this court shall direct; and these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LUCIUS S. BLAKE.
JAMES T. ELLIOTT.

FISH and LEE,
Solicitors for Def'ts.
HENRY T. FULLER,
Of Counsel.

NOVEMBER 3, 1873.—This day came the complainant, by his solicitors, and filed his replication, as follows:

Replication.

Circuit court of the United States, eastern district of Wisconsin. In chancery.

The replication of Eugene Howland, complainant, to the answer of Lucius S. Blake & James T. Elliott, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said de-
36 fendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

PALMER, HOOKER & PITKIN,
Compl't's Solicitors.

NOVEMBER 8, 1873.—This day came the complainants, by their solicitors, and filed a notice as follows:

United States circuit court, eastern district of Wisconsin.

EUGENE HOWLAND, COMPLAINANT,
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT, DEFENDANTS.

To Mess'rs Fish & Lee, defendants' attorneys:

37 GENTLEMEN: Please take notice that the complainant in this cause desires the evidence to be adduced therein to be taken orally, and that the same will be so taken by and before Edward Kurtz, one of the examiners of this court, at such time and place as he may designate.

Dated November 3d, 1873.

Yours, &c.,

PALMER, HOOKER & PITKIN,
Complainant's Solicitors.

Due service of the within notice admitted this 3 day of Nov., 1873.

FISH & LEE,
Sol's for Def'ts.

Set down for hearing.

MARCH 31, 1874.—"On motion of Palmer, Hooker & Pitkin, compl't's sol'rs, ordered that this cause be, and is hereby, set down for hearing on bill, answer, replication, & proofs at the term of this court to be held on the 21st of April, 1874."

MAY 5, 1874.—Depositions received per express from Watertown, N. Y., & filed.

Set down for hearing.

JUNE 11, 1874.—"On motion of Palmer, Hooker & Pitkin, ordered that this cause be, and is hereby, set down for hearing on the bill, answer, replication, and proofs at the term of this court to be held July 6th, A. D. 1874."

38 *Set down for hearing.*

JUNE 22, 1874.—"On motion of Palmer, Hooker & Pitkin, complainant's solicitors, ordered that this cause be, & is hereby, set down for hearing on the bill, answer, replications, & proofs at the term of this court to be held on the 2d Tuesday of July, A. D. 1874."

AUGUST 20, 1874.—Three packages of depositions on behalf of the complainant and five packages of depositions on behalf of the defendants, with defendants' exhibits from No. 1 to No. 12, inclusive, and compl't's Exhibits No. 15, received from Edward Kurtz, examiner in chancery, and filed.

Set down for hearing.

SEPTEMBER 14, 1874.—"On motion of Dixon, Hooker & Palmer, compl't's sol's, it is ordered that this cause be, and the same is hereby, set down for hearing, upon the pleadings & proofs on file, at the next term of this court, appointed to be held at the city of Milwaukee on the first Monday of October next."

Hearing.

And now, at this same term, to wit, October term, A. D. 1874, and on the twenty-sixth day thereof, to wit, on the twelfth day of November, A. D. 1874—present the honorable Thomas Drummond, circuit judge, presiding—the following proceedings were had, to wit:

39 EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT. } In equity.

This day came the parties, by their counsel, and this cause came on to be heard upon the pleadings and proofs, and the hearing not being concluded, the same was adjourned until to-morrow morning.

And afterwards, to wit, on the twenty-seventh day of said October term, to wit, on the thirteenth day of November, A. D. 1874, the following proceedings were had, to wit:

Hearing concluded.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT. } In equity.

This day came the parties, by their counsel, and the hearing of this cause was resumed, and being argued by M'r Hooker for the complainant, and by Mess'rs Fish & Dyer for the defendants, and submitted, the court took time to consider of the same.

40 And on said hearing the following testimony and proofs were read in evidence, to wit:

COMPLAINANT'S TESTIMONY.

41 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE AND JAMES T. ELLIOTT. }

Depositions in the above-entitled cause taken before Edward Kurtz, one of the examiners in chancery of said court, pursuant to notice duly given at his office in Milwaukee, this Thursday, November 20th, 1873.

Present, D. G. Hooker, counsel for complainant.
Cha's E. Dyer & John T. Fish, " " defendants.

Deposition of R. W. Howland.

RICHMOND W. HOWLAND, being duly sworn as a witness for the complainant, deposes & says:

I am 48 years of age; am traveling agent by occupation, and reside in the town of M't Pleasant, in Racine County, in this State. I know the complainant in this suit. He is a brother of mine. I know the defendants in this suit, Mess'rs Blake & Elliott. Have known M'r Blake since the year 1850, and M'r Elliott since the year 1856 or 1857. (Complainant's counsel shows the witness a power of attorney.) My brother, the complainant, executed to me this power of attorney (now shown to the witness), bearing date July 30th, 1857.

(Complainant's counsel offers the said power of attorney in evidence, and is hereto annexed, marked "Exhibit A.")

42 I acted for my brother under this power of attorney in the year 1857. Under this power of attorney I gave a mortgage on lots 4 and 12, in block 18, described in said power of attorney. This was done in August or September, 1857. It may have been later than that, as late as October. I gave only one mortgage on those lots under this power of attorney. That mortgage was given to Isaac Taylor, of Racine, for seven thousand dollars, for money to be advanced from time to time by M'r Taylor, and part of it had already been advanced.

Q. For what purpose was that money borrow' of M'r Taylor?

A. It was borrowed for the purpose of erecting and completing a building on lot No. 12, in block 18, aforesaid. The money was used for that purpose. The erection of that building was commenced in the month of July, 1857. The whole expense of erecting that building, as near as I can recollect, was about twenty-four thousand dollars.

Q. On what time, & at what rate of interest, was that loan made by M'r Taylor?

(Objected to by def'ts' counsel, for the reason that the mortg. referred to is the best evidence of the terms on which the loan was made.)

A. The rate of interest was 10 per cent. I believe the time was three years. (Complainant's counsel says he will furnish a certified copy

43 of that mortgage.) That building was not entirely completed until the spring or summer of 1859. After its completion, the different parts of that building were rented. The annual rent before I surrendered possession, I think, was about $2,200. I think I surrendered possession of it either in the latter part of the year 1859 or fore part of 1860. The upper story of the building was surrendered as soon as it was finished, to M'r Taylor. It had been rented before that time to the Masonic lodge. The balance of the building I surrendered possion of on the 4th day of May, 1858, to Phineas Hardy, of Jefferson Co., N. Y. (Complainant's counsel shows witness a paper.) The upper story was surrendered to M'r Taylor under an agreement, of which this paper purports to be a copy. (Complainant's counsel offers said paper in evidence, and same is hereto annexed, marked "Exhibit B.")

(Complainant's counsel shows witness another paper.)

WITNESS. The surrender to M'r Hardy was made under an agreement, of which this paper purports to be a copy. I think I was mistaken about the date of the surrender to M'r Hardy.

(Complainant's counsel offers said last paper in evidence, & same is hereto attached, marked "Exhibit C.")

Q. These papers, Exhibit B & C, purport to have been executed by Eugene Howland personally. Were they executed by him, and where was he at that time?

44 A. They were executed by him personally. He was at Racine at that time. At the time the power of attorney was executed, he resided in Tolume County, California. At the time these papers were executed he remained in Racine about a year, or something over—a year and six or eight months. He came there in about January, 1858. That is my recollection. I acted for him under the power of attorney there before he came and after he went away.

Q. Was the mortgage, mentioned in Exhibit C, to M'r Hardy paid after the execution of the paper of which Exhibit C is a copy, and when?

A. It was paid, I think, about a year after that time, as near as I can recollect, by my brother, the complainant. After the payment of the mortgage the property was surrendered to M'r Isaac Taylor.

Q. You may state whether M'r Taylor took possession of the whole property after that, and state who collected the rents.

(Objected to by def'ts' counsel as incompetent, for the reason that the question calls for a transaction with Isaac Taylor, who is dead.)

A. He did, and collected the rents, and had the whole management of the property after that.

Q. State the arrangement made with M'r Taylor, under which he took possession of the property & collected the rents.

(Objected to by def'ts' counsel as immaterial & incompetent, and for the reason that the question calls for a transaction with Isaac Taylor, who is dead.)

45 (It is admitted by the counsel of the respective parties that Isaac Taylor is & was at the time of the commencement of this suit dead, and that the transaction called for by the question was one had personally with the deceased by the witness, as agent of the compl't.)

A. I gave him a written surrender very similar to the one under which M'r Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt & interest. He agreed to carry the property until the debt was canceled in that manner. I think he qualified that by saying, or until it was evident, that the property would not pay it. And in case it was thought advisable to sell the property, the proceeds, after paying him should revert back to Eugene Howland, the complainant. I think that is about the substance of it.

(Def'ts' counsel objects to any testimony of the arrangement with M'r Taylor not expressed in the written surrender referred to, and to all testimony of any parol agreement with said Taylor.)

Question by M'r Dyer, def'ts' counsel. What part of the agreement with M'r Taylor, referred to in your last answer, was in writing, and what part verbal?

That part of my answer contained in the first four lines, down to the words "He agreed to carry," &c., was in the written agreement. That part of my answer commencing with the words "He agreed to carry" was in the verbal agreement.

Ex'n cont'd by complainant's counsel:

Q. Do you know where that written surrender is?

46 A. I do not. I supposed it was in the records of the county, but it don't appear to be. I did not keep a copy of it. I applied to M'r Kelly, who was M'r Taylor's clerk, for it, but he did not know anything about it. M'r Kelly has been one of the managers in the settlement of M'r Taylor's estate, I believe.

(Compl't's counsel renews the question put by him before stated on

the foregoing page, commencing on the 4th line, and it is conceded that the objection & answer to same may stand as if re-written or repeated here.)

Q. You may state whether M'r Taylor took possession and collected the rents under that arrangement, and for how long a time.

(Objected to as above, & for same reason.)

A. He did take poss'n under that arrangement, & kept possession until it was transferred to Blake & Elliott, the defendants in this suit.

Q. You may state whether at any time while he was so in possession, and when, a suit was instituted for the foreclosure of M'r Taylor's mortgage.

A. I don't reccollect the exact date, but think it was in 1861, the summer of that year, that a suit was commenced to foreclose M'r Taylor's mortgage. It was commenced in the Racine circuit court. A decree was rendered in that case at the spring term of court in the year 1862.

47 The amount due at the time of the decree was, according to my impression, a little less than $9,000. That amount was arrived at by a settlement with M'r Taylor & myself. That settlement was made at the time the judgment was rendered. The judgment was made up by the amount due on the mortgage, and the advances over and above it, and deducting the rents from that amount. There was a sale under that decree made on the 19th day of June, 1862. A deed was made to M'r Taylor by Sheriff Taylor pursuant to said sale, as appears by the record.

Q. You may state whether, at about the time that suit was commenced, or soon after it was commenced, you had an interview with M'r Taylor or made any arrangement with him in reference to the suit. State what the interview or arrangement was.

(Objected to as incompetent, for the reason that Taylor is dead; and, for the same reason, it is understood that every part of the foregoing testimony or subsequent testimony relating to transactions with said Taylor is objected to for same reason, and also objected to as immaterial.)

48 Ans. Shortly after the suit was commenced I called on him with reference to the foreclosure, at which time he assured me that the plaintiff's interest—that is, M'r Eugene Howland's interest—in it should not be affected by it; that he only commenced the suit for the purpose of perfecting the title. He also said he would carry out in good faith all arrangements he had made previous to that. He agreed to bid in the property for the amount due on the judgment, and I was not to make any delay in the suit.

Quest. What arrangement, if any, was made as to his continuing to occupy the property after the sale, and applying the rents to the payment of the mortgage debt?

(Objected to by def'ts' counsel for same reason as before.)

Ans. He was to continue in possession and apply the rents & earnings as he had done previously. After the debt was paid the property was to revert back to the plaintiff. There was to be a conveyance made to him.

Ques. State whether Taylor did remain in possession of the property after the sale, and whether he continued to apply the rents & earnings to his debt as before.

Ans. He did, for about ten months.

Ques. Was any change or transfer made in the property about that time?

Ans. There was. It was transferred to Blake & Elliott, the defendants in this suit.

Ques. How did it happen that that transfer was made?

(Objected to as incompetent & immaterial.)

Ans. It was made by arrangement between myself, M'r Taylor & M'r Blake. I made an arrangement with M'r Blake a day or two before that to arrange with M'r Taylor for M'r Blake to carry the trust or the property instead of M'r Taylor. M'r Taylor did not want to carry it because he did not want to be annoyed with tenants. That was one reason, and another was that he wanted to move his business to Chicago. M'r Taylor wanted me to procure some one to take his place and I went to M'r Blake for that reason.

Ques. State why you went to M'r Blake to get him to do it; what had been your relations with him and the relations of your family with him before that time?

(Objected to as immaterial.)

Ans. I went to him because he had been talking of carrying it for the last ten months before that. My relations with M'r Blake had always been friendly, and my family relations were also friendly to him. At that time I had been in his employ for nearly two years and was in his employ then, and was in his employ at least five years after that.

50 My wife was brought up in M'r Blake's family for four years previous to our marriage, and we were married at his house.

Ques. State what arrangement you did make with M'r Blake for carrying the property.

(Def'ts' counsel objects to above as incompetent & immaterial.)

Ans. There was an arrangement by us at the time of the sale. M'r Blake, in connection with M'r Horatio T. Taylor, who was then sheriff, agreed to take the property and carry it six years. They were to pay $2,000 down & the balance in six years' time, at 7 per cent. interest, and the plaintiff in this suit was to pay them ten per cent., & M'r Sheriff Taylor was to take charge of the property, collect the rents, and apply it to the cancellation of the indebtedness. Isaac Taylor was to convey the title of the property to them. After this arrangement was made I took a trip to the country for about a week, and when I returned was informed that for some reason the arrangement had fallen through. I also made a very similar arrangement with M'r Blake & M'r John W. English in December of the same season, and that also fell through. There was no other arrangement until this final arrangement with M'r Blake about two days before the transfer was made. The arrange-

51 ment with M'r Blake differed in only one respect from the others, that there was no definite time fixed. I also agreed that I would not trouble or annoy him in any manner, but would let it run until the property paid for itself. That is all I recollect at present.

(Def'ts' counsel objects to the above answer as immaterial and incompetant.)

Ques. At the time you made this arrangement with M'r Blake, do you know whether he understood fully the terms under which M'r Taylor had been carrying the property? and, if so, state what the fact is.

Ans. I think he must, because we talked it over between ourselves, and there was no misunderstanding.

Ques. Was M'r Blake at that time, and was the firm of Blake & Elliott, wealthy at that time?

(Objected to as immaterial.)

Ans. They were understood to be in liberal circumstances, so much

so that M'r Taylor was willing to take M'r Blake and recommend him to go into it. They had frequent conversations about the matter.

Ques. Was a conveyance of this property made by M'r Taylor to the defendants in pursuance of this arrangement with M'r Blake?

Ans. Yes, sir.

Ques. What was paid, if you know, by the defendants to M'r Taylor on receiving that conveyance?

Ans. About $10,000.

52 Ques. Did you understand that to be the amount due M'r Taylor from the pl'ff?

Ans. It was just the amount, as I understood it.

Ques. Do you know whether that was paid in money, or how it was paid?

Ans. Part in money & part in notes.

Ques. Were the notes secured by mortgage on the property?

Ans. Yes, sir.

(Witness is here shown a paper & says—this is a copy of the mortgage referred to; the same is hereto annexed & marked "Exhibit D.")

Ques. Upon the execution of the deed by Taylor to Blake & Elliott did they take possession of the property?

Ans. They did, and collected the rents and took the whole management of the property.

Q. Up to the present time?

A. Yes, sir.

Adjourned to Friday morning, Nov. 21, 1873, at 9½ o'clock.

53 FRIDAY MORNING, *Nov.* 21*st*, 1873.

Present, same parties as before.

Q. In making the arrangement with Blake, what was said as to the application of the rents by Blake?

A. It was to go to liquidate the indebtedness of the property.

Q. Was anything said about keeping an account of the rents & expenses, & what?

A. He was to keep an account of the earnings of the property, and also of the expenses & disbursement.

Q. What was the arrangement as to a conveyance of the property when the debt was paid?

A. He was to reconvey it to the plaintiff. That was the arrangement with M'r Blake.

Q. Had you had any similar arrangement before that time in relation to other property with M'r Blake, and what was it?

(Objected to as immaterial & irrelevant.)

A. Yes, sir. It was a brick-yard property, on the lake shore, some five miles from Racine. In the spring of 1860 he bid on this brick-yard property at sheriff's sale, by an arrangement very similar to this, and was carrying it at the time of this purchase. He carried it, I think, till the fall of 1867. I then negotiated a sale of the property, and he confirmed it & conveyed the property according to my arrangement.

54 I had a settlement with him at that time about it, and the sale a little more than balanced the indebtedness. He paid the balance over to me. M'r Blake paid the taxes from the time of the purchase at sheriff's sale down to the time of the settlement above mentioned.

(The foregoing testimony objected to by def'ts' counsel as irrelevant & immaterial.)

Quest. Shortly before you made this arrangement with Blake in reference to the property in controversy in this suit, had a proposition been

made by any other person for the actual purchase of the property; and, if so, what was it?

(Objected to as immaterial.)

Ans. Yes, sir. M'r Isaac Taylor came and told me that he had a proposition from Chicago to purchase the property, whereby there would be $4,000 or $5,000 coming to the plaintiff; that is, the proceeds of sale would exceed the indebtedness about that amount. I objected to it on account of the amount being too small. He then urged me very strongly to get some one to take the property off his hands & carry it instead of him, & recommended M'r Blake.

(The above answer objected to by def'ts' counsel as not responsive to the question and as incompetent evidence, M'r Taylor being dead, and also because his testimony is immaterial & hearsay.)

55 Cross-examination:

Ques. Who held the title to lots 4 & 12 when the power of attorney from your bro. to yourself, which is in evidence, was made?

Ans. Eugene Howland, the complainant in this suit.

Quest. Who made the purchase of that property?

Ans. My father & myself.

Q. When was the purchase made?

A. I think it was in the fall or latter part of the season of 1851.

Q. Was you in business in Racine at that time?

A. I was; for my father.

Q. In what business?

A. Book & stationery business.

Q. How long were you engaged in that business?

A. From that time until August, 1858.

Q. Was that business then discontinued?

A. Yes, sir.

Q. What occasioned your discontinuance of that business?

(Objected to as not cross-ex'n & immaterial.)

A. In January, 1858, the firm failed and made an assignment. The firm was Howland and Adams.

Q. From 1851 until the discontinuance of the book business, did the property in question in this suit remain as it was when purchased?

A. Yes, sir; only my brother purchased half of it first, and the other half came to him within two or three years afterward.

Q. How did you and your father pay for the property when you bought it?

56 (Objected to as not cross-ex'n and immaterial.)

A. We paid part of the money down, and gave a mortgage on it to secure the balance.

Q. Who executed the mortgage?

A. W'm H. Jenks. He took the title and conveyed half of it to my brother.

Q. Who exercised control over the property after the purchase?

A. M'r Jenks & myself, in conjunction, until he sold out his interest to another man, named White. I acted on behalf of my brother.

Q. When was your brother Eugene Howland first at Racine?

(Objected to as not cross-ex'n & immaterial.)

A. He was at Racine nearly all the summer of 1850—the summer before the purchase.

Q. When did he go away from Racine?

(Same objection as last.)

A. He went home to my father in that fall of 1850.

Q. When was he next in Racine?
(Same objection as last.)
A. I think it was in the spring of 1852 he came there and fitted out for a trip to California.
Q. Did you have any power of att'y from your brother for the purchase of this property?
(Same objection as last.)
A. No, sir.
57 Q. At the time of the purchase of the property did you have any moneys in your hands belonging to your brother?
(Same objection as last.)
A. I did not.
Q. What proportion of the purchase-money for this property was paid in cash?
(Same objection as last.)
A. $500 paid down.
Q. Who paid the $500?
(Same objection as last.)
A. M'r Jenks paid half of it and my father paid the other half for my brother.
Q. What was the total consideration in that purchase?
(Same objection as last.)
A. Three thousand dollars for lots 3, 4, & 12, bl. 18.
Q. Was a mortgage made for $2,500?
(Same objection as last.)
A. I believe there was.
Q. Who executed that mortgage?
(Same objection.)
A. W'm H. Jenks executed the mortgage.
Q. Did M'r Jenks take the entire title in his own name?
(Same objection as last.)
A. I understand M'r Jenks took the entire title and quit claimed one undivided half back to my brother.
Q. Did he quit claim simultaneously with the purchase?
(Same objection as last.)
58 Ans. It was all one transaction.
Q. To whom did White convey the interest he got from Jenks?
(Same obj'n as last.)
A. He conveyed it to my brother, I acting as his agent.
Q. When?
(Same objection as last.)
A. I don't recollect the exact time; think it was some time in the year 1853.
Q. Did you personally participate in all these transactions?
(Same obj'n as last.)
A. I had a personal knowledge of them all.
Q. Did you take part in them?
(Same obj'n as last.)
A. I did.
Q. When did your brother go to California?
(Same objection as last.)
A. I think it was in the spring of 1852.
Q. How long did he remain there?
(Same obj'n as last.)
A. Until the fall of 1857.

Q. Had you any power of att'y from your brother previous to the one in evidence, made July 30th, 1857?
(Same objection as last.)
A. I had.
Q. When was it made?
(Same objection as last.)
A. Some 6 or 8 months previous to this one.
Q. Had you any previous to that time?
(Same obj'n as last.)
A. I had no written power of att'y before that. I only acted as his agent.

59 Q. Why and for what reason was the title to this property taken and these transactions had in your brother's name?
(Same obj'n as last.)
A. Because it was his property.
Q. Was there any other reason?
(Same obj'n as last.)
A. Not that I am aware of.
Q. Who had the rents and profits of the property before the present building was erected?
(Same objection as last.)
A. There was not much earnings to it, only a small house. Whatever the earnings were went to pay taxes.
Q. Prior to the purchase of the property had you had any communication with your brother concerning the purchase?
(Same obj'n as last.)
A. I think we did when he was there the year before.
Q. When was the erection of the present building begun?
A. In the month of July, 1857. It was finished in the spring of 1859.
Q. Did you have general charge of the construction of the building?
A. I did.
Q. Did you design the plan of the building?
A. The architects, Mess. Wratten & Frenun, got up the designs and submitted them to me, and M'r Taylor was also consulted.
Q. Did you individually make purchases of material to be used in the construction of the building?
A. I did.

60 Q. Did you make contracts with mechanics for its construction?
Ans. I did.
Q. Did you while the building was in course of construction purchase and give your individual obligations for material to be used in it?
(Same objection as last.)
A. I did not with perhaps one exception, and that was M'r Blake himself.
Q. Is the building in question a brick building?
A. It is what is usually called a brick building.
Q. What is its size?
A. 60 feet front by 90 feet deep, 5 stories high.
Q. What was the cost of brick per thousand used in the building?
A. $6.50 to 7.00 per thousand on the ground for common brick; about $10.00 per thousand for front bricks.
Q. How many thousand common brick were used?
A. It approximates very closely to 700,000.
Q. How many thousand front brick were used?
A. I think nearly 40,000.
Q. What was paid workmen for laying brick in the building?

A. I think the contract was $3.50 per thousand; it may have been a little more or a little less.

Q. Did that include material, such as lime & sand?

A. It did not.

Q. What did the entire mason-work cost?

A. I am unable to tell you just now.

Q. Have you any means of ascertaining?

61 A. I have not any direct means. I can only approximate it.

Q. From your best knowledge and recollection give us the approximate cost of the mason-work exclusive of material.

A. That is a pretty broad question. There was the stone-work and brick-work. The stone, I think, was 107 cords at $7.00 per cord on the ground. I can't give the cost of the mason-work, without time to figure it up, exclusive of material.

Q. Can you tell within $5,000.00?

A. Yes, sir.

Q. Can you tell within $3,000?

A. Yes, sir. I couldn't now, at the present time, without figuring.

Q. What was the cost of the carpenter-work on the building?

A. For the enclosing of the building I think it was about $4,000.

Q. What was the total cost of the carpenter-work in the building exclusive of material?

A. That would be as difficult, or more so, than the plastering. A great many changes were made in the building before it was finished.

Q. Can you now tell the total cost?

A. I cannot, without figuring it; it would be more difficult than to determine the mason-work.

Q. Were there any bills for expense of labor or material incurred in the construction of the building which were not paid at the time of the foreclosure of the Taylor mortgage?

62 Ans. There were.

Q. To what amount, as near as you can state?

A. I couldn't give the exact amount. I think M'r Taylor held some $1,500. It might have been a little more or a little less; the balance I think would not vary far from $1,000. That was owing to Langlois and Robilliard, Thomas Talvey, and the gas-fixtures. It probably reached between $1,300 and $1,400 altogether. There might have been a little due on mason-work. I think a man named McGraw had $40 due him. There was something due to Wratten. On reflection, I think the whole am't due was $1,500, about, beside what was due to M'r Taylor.

Q. You have spoken of changes made in the building in the course of its construction. Who directed those changes to be made?

A. I directed them.

Q. Where was your brother at that time?

A. He was in California.

Q. In planning and superintending the construction of the building while it was in progress, did you have any consultation with your brother?

A. Not until the January following (1858).

Q. You have stated that the annual rent of the building was $2,200. What time do you refer to?

A. I refer to the first leases, made in the fall of 1858 and in the spring & summer of 1859.

63 Ques. What was the annual rent received from the building in 1863, at the time of the conveyance to Blake and Elliott?

A. I think between $1,800 and $1,900 a year.

Q. Name the tenants at the time, and the rent each was paying.

A. I don't know that I can do it exactly, but will do it as near as I can. The Masonic Hall, $200; Sanford & Tapley, printers, $200; city council-room, $80; David McDonald, justice of the peace, $75; Paine & Millett, att'ys, $125; C. W. Bennett, $112.50; Lyon & Adams, $100; Smith & Jones, painters, $50; P. office, $200; A. O. Barch & Co., $350; C. F. Bliss, $350 or $400. I believe that is all.

Q. How much was due upon Isaac Taylor's mortgage at the time you surrendered the building to him?

A. The whole am't of the m't'ge & accrued interest unpaid. At the time of the sale, I think all the mechanics' liens had been settled with M'r Taylor.

Q. As near as you can remember were the terms of the written surrender to M'r Taylor like those of the surrender to Hardy?

A. Very similar, except that all the income was to go to M'r Taylor.

Q. When did you and M'r Taylor have the talk about which you have testified in relation to the surrender and its terms?

64 A. It was, I think, early in the season of 1860. A year or a year and a half before he commenced the foreclosure suit.

Q. Was that talk had before the written surrender was drawn?

A. I think we had a talk before and one at the time of the surrender.

Q. You have testified to certain terms of surrender made verbally with M'r Taylor; was that talk had before the written surrender was drawn?

A. Yes, sir, it was; the first talk was.

Q. In your direct ex'n you state that you gave M'r Taylor a written surrender, then that he verbally agreed to carry the property until the debt was cancelled by the earnings or until it was evident that the property would not pay it. Was that verbal agreement there referred to made before the written surrender?

A. It was made before, and confirmed at the time the surrender was made.

Q. Was the actual surrender made at about the time the written surrender was executed?

A. It was. We made the agreement & went off and had it reduced to writing. He took possession at the time the written surrender was delivered to him.

Q. Where was the verbal agreement made, and who was present?

A. It was there on the street, by the building; do not know that any one was present.

65 Q. Was it talked about at the time the written agreement was drawn?

A. The terms were agreed upon and I went and had the agreement put in writing at Paine and Millett's office.

Q. When the foreclosure of the Taylor mortgage was commenced were the papers served upon the defendants?

A. I suppose they were. I presume most of them waived service. I don't know.

Q. What was due M'r Taylor at that time?

A. I don't know.

Q. How much was due when judgm't was rendered?

A. I don't know the exact amount, but think it was something less than $9,000. At the time of the sale it was about $9,300.

Q. You have stated that M'r Taylor told you that he foreclosed for the purpose of perfecting the title; did he state in what particular the title needed perfecting?

A. He did not; he only stated in general terms.
Q. Did you then consent to the foreclosure?
A. I did.
Q. For what purpose did you consent?
A. I don t know that I had a purpose. I had a reason, because he had agreed to carry out his promises in good faith.
66 Q. Was there anything to your knowledge in the title which prevented the carrying out of the agreement in good faith without a foreclosure?
A. I thought it rather unnecessary, but he insisted and I consented on his agreeing to fulfil' his previous agreement.
Q. Did you not at the time the foreclosure was commenced know of these claims of which you have spoken against the property and that they would be cut off by the foreclosure?
A. I understood that there were quite a number of claims in which the parties had not made the proper application for liens, and the time had passed for them to file liens, and those that were liens M'r Taylor had cared for.
Q. What became of the claims upon which liens had not been perfected?
A. Some of them have been paid, some partly paid, and others not paid at all.
Q. Did you not know at the time the foreclosure was commenced that it would cut off any judgments that might be obtained on those claims on which liens had not been perfected?
A. It would as judgment liens, but not as mechanics' liens. I must have known it then. I know it now.
67 Q. Was that not talked about between you and M'r Taylor at or before the time the foreclosure suit was commenced?
A. I have no knowledge of having any conversation with M'r Taylor before the foreclosure commenced nor for some time after it commenced, for he was absent from home at the time it was commenced. As soon as he came home I called upon him and had this conversation in which he agreed not to harm my brother's interest, and carry out his previous agreement in good faith.
Q. Was not the matter of cutting off claims upon which mechanics' liens had not been perfected talked about by you and M'r Taylor before or after the foreclosure was commenced?
A. It may and may not. I could not say for certain.
Q. At your interview with M'r Taylor after his return did he not state to you that the object of the foreclosure was to cut off all such claims?
A. He stated that it was to clear up and perfect the title. Do not think any particular class of claims was mentioned.
Q. Was there any other incumbrance at that time upon the property except mechanics' claims?
A. There were not, except that M'r Rhodes had a deed based upon one of the mechanics' liens, but M'r Taylor told me he controlled that. He controlled it before he commenced the foreclosure.
68 Q. Is it not true that it was the object of the foreclosure to cut off claims upon which liens had not been perfected, but which might subsequently be put in judgment?
A. Very probably.
Q. Did you not so understand it?
A. It was to cut off claims & perfect the title. That is the way I understood it.

Adjourned to Nov. 26th, 1873.

WEDNESDAY, *November 26th*, 1873.

Present, same parties.

Q. Where was the settlement made with M'r Taylor which you have mentioned, when the amount due on the mortgage was arrived at, and who was present?

A. It was at the court-time, the time you took judgment. I can't tell who was present. M'r Taylor came to me with figures and I compared notes and found them right.

Q. Was it the occasion when H. T. Taylor was present, and when there was talk with him?

A. I don't think it was. I am nearly positive it was not.

Q. At the time the decree was rendered what amount of advances had M'r Isaac Taylor made on account of the property over and above his original loan?

A. He made advance to the amount of the difference of his original loan and the judgment; the interest may have amounted to more
69 than that; he also had paid some taxes and one or two liens, which were in the form of judgment or judgments, and I think a deed had been given on one of the judgments.

Q. After the foreclosure sale, were any judgments rendered against you or your brother in Racine circuit court on claims for work or materials done and furnished upon the building, upon which mechanics' liens had not been perfected?

(Objected to on the ground of immateriality and not cross-examination.)

A. Myself and my younger brother, J. K. Howland, signed a joint note with my brother Eugene Howland as security for the gas-fixtures in the building; that note has been sued and is in judgment. I do not recollect any other upon which judgment has been obtained. I think that judgment has not been paid. I think the original amount exceeded four hundred dollars; it may have been even more, but I never charged my mind with the transaction.

Q. Was the talk with H. T. Taylor about the property referred to in his testimony, which he designated as the arrangement with yourself, M'r Blake, and M'r Isaac Taylor, had at the time of the foreclosure sale?

A. It was had mostly on that day and the day before, but they
70 did not come to any definite arrangement on that day. I asked M'r I. Taylor for an adjournment of the sale for a few days. He said that would make no odds; he would bid it off and hold it until arrangements could be completed. The day after the sale they did make positive arrangements, as I understood. I then went on with my business as usual, with the understanding that the writings were to be drawn in my absence.

Q. Where was the conversation had with Isaac Taylor, referred to by you, in which you say he assured you that your brother's interest should not be affected by the foreclosure?

A. I think it took place at his house. I went to his house. Nobody was present that I remember.

Q. Where did M'r Taylor live at that time?

A. I think he was living on Main street, at the residence now occupied by George Slawson.

Q. At the time of the transfer of the property to Blake and Elliott, or any time afterward, did you know what kind of a deed M'r Taylor executed to them?

(Objected to as immaterial.)

A. I afterwards learned that it was a warranty-deed, and understood it was to be that kind of a title.

Q. By whom was it so understood?

71 A. It was so understood at all previous arrangements by myself, M'r Isaac Taylor, and M'r Blake, and no other agreement was made as to the character of the deed.

Q. Where did you make the arrangement with M'r Blake to take the property, about which you have testified?

A. I found him that morning in the rear of the shop, under an old shed. No one was present to my knowledge.

Q. Was all the talk between yourself and Blake on that day, about the property, had at that place?

A. That was the last and final conversation that I had with him before the purchase. I had several talks with him during the preceding year or ten months.

Q. Who was present at those several talks?

A. I cannot mention names at present. I do not recollect any one being present at any of the conversations except M'r Isaac Taylor & M'r Horatio T. Taylor.

Q. In what year did you have the talk with M'r Blake under the shed?

A. It was in the year 1863, on the day or second day before the

72 transfer from Isaac Taylor to Blake and Elliott. By the transfer I mean the execution of the deed from I. Taylor to Blake and Elliott.

Q. From the time of the execution of that deed until the time of bringing this suit did you ever make any claim to the defendant James T. Elliott that the conveyance from Isaac Taylor to Blake and Elliott did not convey an absolute title without condition, or that it left any interest on the property in your brother?

(Objected to as immaterial.)

A. I never made any arrangements with M'r Elliott. I never recognized him in the transaction, neither before nor since. I never had any talk with him about it—never intended to.

Q. Did you know the deed from Isaac Taylor was made to Blake and Elliott?

(Objected to as immaterial.)

A. I learned it after the purchase.

Q. How soon after the purchase?

A. As soon us I got in from the trip I was making at the time.

Q. How many days or weeks elapsed after the conveyance before your return?

A. Three or four days.

Q. Did you at that time know M'r Elliott familiarly?

73 (Objected to as above.)

A. I did.

Q. Where were you at that time selling fanning-mills for the defendants?

A. I was selling from the shop. I sold that load in Kenosha County.

Q. Where did you next go after returning from that trip?

A. I kept right on selling, mostly in Kenosha County, and from there into McHenry Co., and so on to Boone Co., in Illinois.

Q. Did M'r Elliott at that time keep the books of the firm of Blake & Elliott?

(Objected to as immaterial.)

A. He kept such books as they had. They did not keep a regular set of books.

Q. Did you ever say anything to M'r Elliott after the conveyance to Blake & Elliott about the rents of the building, what at any time was their amount, and to what extent they were being paid?

(Objected to same as before.)

A. I never did.

Q. Did you know subsequent to the conveyance to Blake & Elliott that repairs were being made upon the building?

(Objected to same as before.)

74 A. I did; necessary repairs.

Q. Did you ever make any inquiry as to the cost or extent of those repairs?

(Objected to same as above.)

A. I did not, more than by observation of what I saw.

Q. Did you ever make any inquiry as to the amount of rents being realized from time to time from the property?

(Objected to same as above.)

A. Not any more than I knew and heard. I never made any inquiry.

Q. When did you cease, if at all, to be your brother's agent?

A. I never ceased.

Q. Had your brother any other agent at Racine?

A. Not to my knowledge.

Q. After the foreclosure sale, and before the conveyance to Blake & Elliott, did Isaac Taylor collect the rents from tenants in the building?

A. He did just the same as before the sale.

Q. Did the nine thousand three hundred dollars for which the foreclosure judgment was rendered include all the money originally loaned by him and subsequently advanced on account of the property by him?

A. I understand it did, less the rents and earnings up to the

75 day of settlement. There was a lien of G. Q. Erskine. My impression that was included in the settlement. I am not certain.

Q. Did that settlement include all monies loaned and advanced on account of the property by Isaac Taylor, and all rents, earnings, and monies received by him?

A. That was the balance due him, except the Wilsey lien and the Hettrick lien and some tax-liens, as I understand it.

Q. Where was the arrangement with M'r Blake made by which he agreed to reconvey the property to the plaintiff?

A. Under the shed, at the time of the conversation there; there was never any other or different agreement talked of.

Q. When was your brother last in Racine?

A. I think it was the fall of '59. I am very sure it was.

Q. Where was he living at and subsequent to the time of the conveyance from Isaac Taylor to Blake and Elliott?

A. Living in Tolume County, California; he was living there till the fall of 1864. He then came to Watertown, New York. He has lived there ever since to the best of my knowledge.

Q. How do you know he lived in Tolume County, California, and Watertown, New York?

76 A. By letters from my friends and family.

Q. Did you receive any letters from him?

A. I did not.

Q. Did you write any letters to him?

A. I did not.

Q. When did you last write him, if at all?

A. I have not written him at all.
Q. When did you last receive a letter from him?
A. About the time he went to California, in the year '60 or '61.
Q. When did you last see him?
A. I left him the third day of last June.
Q. When did you last see him before that time?
A. When he left here the last time, in the fall of '59 or '60, it might have been.
Q. When did you first communicate to him the arrangement under which you say this property was conveyed to Blake & Elliott?
(Objected to as immaterial.)
A. When he went to California he wrote me that my brother Jerome to keep him posted as to his property in Wisconsin, and I did so repeatedly. I informed Jerome how the things had been disposed of, from time to time, and I did also right away.
77 Q. When, subsequent to the conveyance by Isaac Taylor to Blake & Elliott, did you first directly communicate to Eugene Howland the arrangement under which you say the property was conveyed?
A. I never communicated with him directly. I saw him last spring in regard to the property. That was the first time I saw him since he came from California. I saw him the last part of May, once or twice, and about the first of June I saw him at my father's, in the State of New York.
Q. Did you consult attorneys about bringing this suit before seeing your brother in May and June last?
A. Yes, sir.
Q. When you saw your brother in May and June last did you get from him permission to bring this suit?
A. I consulted with him about the suit. It was the first time that I consulted him about the suit.
Q. Did he tell you to bring the suit?
A. He consented to have the suit brought; advised it.
Q. Did you agree with him to indemnify him against the costs of the suit?
A. I did not agree to indemnify him against anything; I only
78 stated to him the facts as I understood them in the case.
Q. Who purchased the brick-yard property mentioned in your direct examination?
A. M'r G. Q. Erskine.
Q. Did you negotiate the sale to him?
A. I had a talk with M'r Erskine and supposed that I negotiated the sale, although M'r Blake agreed to take 20,000 brick less than I agreed to take.

Redirect by M'r Hooker:

Q. From the time of the conveyance from Isaac Taylor to Blake and Elliott were you personally familiar with the manner in which this property was occupied?
A. I was and have been up to the present time.
Q. Have you known generally the amount of rents that have been paid by the different tenants from that time?
A. I have.
Q. Is there any special reason why you did not, from time to time after the conveyance to Blake & Elliott, enquire of them, or either of them, as to the income of the property?

A. There was.

Q. What was it?

79 A. Blake wished me to agree, in case he took the property, not to annoy him until it was paid for, and I did agree to it. That was the reason.

WEDNESDAY, *Dec. 24th*, 1873.

Same parties present.

Redirect ex'n resumed:

Q. In your cross-ex'n you say you did not give your personal obligation for any material in the building except in one instance, and then you gave it to M'r Blake: Explain how that was.

A. M'r Blake came to me in the fall of 1858, about a year from the time the debt was created, & told me that Osborn & Osgood had a demand against my brother for some bricks, and that he could make arrangements with them to get that obligation, and said if I would make it a personal matter and agree to see that it was paid, he would get it and carry it for me.

Q. Was there any reason why you did not correspond with your brother Eugene in reference to the property, as you have stated you did not; and what was the reason?

A. The reason was that he was dissatisfied, about the time he went away, as to the way the business had been managed and done, and we agreed that the business after that should be done through our brother Jerome; that is, the correspondence.

80 Recross-ex'n:

Q. Has your brother Eugene's dissatisfaction continued from the time you refer to?

A. He never has made any explanation one way or the other, nor I to him.

Q. Are you and the complainant on perfectly good terms at the present time?

A. As far as I know we are not on any other but good terms. We never had any words or feeling about anything but this property.

Q. Are you on perfectly good terms about this property?

A. Yes; we are. After I made the explanation to him last summer he said he was satisfied with the explanation.

Q. What explanation did you make?

A. After I stated to him the terms & conditions under which this property was managed.

Q. What terms and conditions did you state to him?

A. I stated to him the facts in the case as I understood them.

Q. Did you include in your statement the arrangements you have testified to with M'r Taylor and M'r Blake?

A. I did.

Q. Had you ever before stated to him the arrangements with Taylor & Blake?

A. I never did.

81 Q. When was this?

A. Last May and June, 1873.

Q. After making your statement to him, was he satisfied?

A. I think he was satisfied with my explanation; he appeared to be.

Q. Did you go to New York to see him on your own motion, or because of any letter you received asking you to come?

A. I went there mainly to make him the explanation about this property. I did not go there because of any letter from him.

Q. Did you then go there on your own volition without suggestion from any one else?

A. I went there of my own volition to make the explanation about this property.

Q. Before the building was erected and before your brother went to California, how much money did he leave with you to be used in its construction?

A. He didn't leave any before he went to California. He hadn't determined then when to build.

Q. How much did he afterwards send or deliver to you for that purpose?

A. I believe he claims he sent $1,755 from California. I never kept any account of it, but believe that is correct. The rest he bor-
82 rowed from his father and uncle, and it was sent to me at different times.

Q. How much that he so borrowed was in all sent to you at different times for the purpose of being used in the building, and after you commenced the building?

A. I think I only received $1,000 from my father for that purpose before my brother got home. The rest I got from M'r Taylor; that is, the rest I used before that time. I did not receive any more from my father; the rest was sent to my brother.

R. W. HOWLAND.

83 *Deposition of Horatio T. Taylor.*

FRIDAY, *November 21st*, 1873.

Present, same parties as before mentioned.

HORATIO T. TAYLOR, being duly sworn as a witness on behalf of complainant, deposes and says:

I am 45 years of age last June; am a grocery and provision dealer by occupation, and my residence is Racine, Wisconsin. I knew Eugene Howland, the complainant, and I know the defendants in this suit, Mess. Blake & Elliott. In the spring of 1862 I resided in Racine. At that time I was sheriff of the county of Racine.

Quest. Do you recollect the sheriff sale of lot 12, in block 18, in the 1st ward Racine, known as the Howland block?

A. Yes, sir; I made the sale.

Q. About the time that property was sold at sheriff's sale was any arrangement made between you and any other persons, and, if so, whom, in reference to the property?

(Objected to as immaterial.)

A. There was an arrangement entered into, but not carried out, between M'r Isaac Taylor, M'r Blake, one of the def'ts, and M'r R. W. Howland and myself. I think it was a short time after the sale, but am not positive. It might have been a little before the sale.

Q. State what that arrangement was.

84 (Objected to as immaterial and irre*valent*.)

A. There was considerable talk in regard to this property between M'r Isaac Taylor, M'r Blake, and myself, both before and after the sale, but I cannot tell whether the arrangement was made before or

after. The arrangement was that M'r Blake and myself were to take a deed of the Howland block for about $9,300. We were to hold the property for a certain number of years, my impression was it was six years, collect the rents, pay the taxes, keep the property in proper shape, and if at the end of said time the property had paid for itself, or near enough so that M'r Howland could make up any deficiency, we were to convey the property to him. My understanding of the way that sum was arrived at from conversation between myself, Blake and Taylor, was that it was for money M'r Taylor had advanced on the property, and there were some mechanics' liens I think included in the sum. I understood that was the sum due M'r Taylor for money advanced and those mechanics' liens, less the amount he had received in rents from the property. We were to pay M'r Taylor $2,000 down, and I can't tell just when the balance was to be paid, but there was an arrangement that by paying the balance in a shorter time he was to take a less sum for interest.

85 The arrangement between M'r Blake and myself was that I was to take charge of the property, keep it in shape, pay the taxes, keep it in repair, lease it, and collect the rent. I was to have compensation for this $200 per annum. That arrangement was not carried out for two or three reasons taken together. One was that in the condition the country was then I did not want to tie up my means in that way; another was that I wanted a separate deed from M'r Blake for an undivided half of the property. M'r Blake preferred to have the property together and wanted us to pay $1,000 each on it, and then let it pay for itself after that, so far as he was concerned. It was to be a part of my business to keep a correct account of all rents, taxes, insurance, and all outgoes & incomes of the property.

Quest. What disposition was to be made of the net earnings of the property?

A. I don't think we got as far along as to make any arrangement or disposition of the net earnings. I have no recollection of having any conversation with M'r Blake about this—that is, outside of the first arrangement. M'r Blake said that after paying the $1,000 that the property would pay for itself. That is why I wanted a separate deed. I had some money lying idle at the time and purposed taking advantage of the discount by taking a shorter time of payment.

86 Q. What rate of interest were you to pay, and what rate was M'r Howland to allow you?

A. M'r Howland was to allow ten per cent. I am not clear what we were to pay M'r Taylor.

Q. What disposition was to be made of the property when the net proceeds equalled the indebtedness?

A. It was to be deeded to M'r Howland.

Q. Did you have an interview with M'r Isaac Taylor subsequently to the time this arrangement fell through in relation to the property?

A. Yes, sir; a very few days after. It was after he had been in the property.

Q. State what that interview was.

(Def'ts' counsel objects to above as incompetent, immaterial, and as hearsay evidence.)

A. I went to M'r Taylor and proposed to him that I would take the entire property at the price agreed upon between M'r Blake, him, and myself, and take the title in fee. He said if M'r Howland would consent he would deed it to me. That without his consent he would not do it for that price, remarking at the time: "You know, M'r Taylor, that is no compensation for that property." He told me at that

time how he was holding the property, and why he wanted to get it off his hands; that there was an arrangement between him and M'r Howland that the property should be foreclosed upon a mortgage he held for the purpose of perfecting the title; that M'r Howland ex-
87 pected to have some one bid it off for him on the day of sale. He said he was holding the property for M'r Howland; that he put so much money in it, and when M'r Howland paid him his money and interest he was to deed the property to him. That he was in hopes and did expect that M'r Howland would make arrangements with some one to bid it in for him at the sale, and relieve him from the care of looking after it. The reasons he gave me for wanting to get rid of it were that it had reached him that M'r's Howland was reporting around the streets that people were saying to her that Taylor had got the property in his own hands, and that they would never get any benefit from it.

Quest. Were you familiar with the value of property in the city of Racine in the year 1863?

Ans. To some extent.

Q. What was the value of this Howland property at that time, in your judgment?

(Objected to as immaterial.)

A. I don't know that I could give the value. It would be guess-work.

Q. Do you know what the relation was between the defendants in the spring of 1863—as to whether they were partners at that time and as to whether they were related in any other way, and how?

A. They were partners in business and they were brothers-in-law.

88 Quest. Do you know the relation between R. W. Howland and the defendants at that time?

(Objected to as immaterial.)

A. I think M'r Howland was running a brick-yard for M'r Blake at that time; I don't know just how. I know that M'r Howland's wife made her home with M'r Blake's family for several years before her marriage.

Q. Were Blake and Elliott, in the spring of 1863, reputed to be men of means, and to what extent?

A. They were. I think it was generally understood there at that time that M'r Blake was rather a pretty wealthy man.

Cross-examination:

Q. Did you, as sheriff, make the sale of lot 12 under the foreclosure of the Taylor mortgage?

A. My impressions are that I did.

Q. Was M'r Isaac Taylor present at the sale?

A. I couldn't state.

Q. What do you mean when you state that the foreclosure of that mortgage was for the purpose of perfecting the title to the property?

A. I mean by that it was to transfer the title from Eugene Howland to the purchaser, and to fix up mechanics' liens & other incumbrances against it and get it all into one sum.

Q. Do you know of your own knowledge whether the mechan-
89 ics' liens were cut off by the foreclosure or were paid?

Ans. I do not.

Q. Do you know whether or not the lien-holders were parties in the oreclosure action?

A. I can't remember now.

Q. Do you mean to say that an arrangement was made between yourself, M'r Blake, & Isaac Taylor & R. W. Howland, such as you have mentioned in your testimony, or merely that there was talk about making such an arrangement?

A. I don't consider an arrangement made unless it is completed. The preliminaries were all arranged, but it was never carried into effect.

Q. May you not be mistaken in your recollection that M'r Blake was present at the interview with Isaac Taylor and Howland which you have spoken of?

A. I think not.

Q. May you not be mistaken in supposing that M'r Howland was present at that time?

A. I think we were all present when the arrangement or the details were completed. I had more conversation with M'r Blake & M'r Taylor in regard to the matter when M'r Howland was absent than I did when he was present.

Q. How long after the sale was the interview between all the parties had?

A. I can't tell. My impression is that it was a very short time after the sale.

90 Quest. Where was that interview had at which all were present and the details were arranged?

A. At the court-house. Can't tell whether in the court-room or in the sheriff's office.

Q. Was any one else present beside the parties named?

A. I don't remember that there was. I think this arrangement was made first between M'r Taylor, M'r Blake, and myself, and afterwards talked over between M'r Howland, M'r Blake, and myself, when M'r Taylor was not present, but am not positive whether M'r Taylor was present or not.

Q. By the terms of the proposed arrangement, were you and M'r Blake to pay Isaac Taylor ten per cent. upon the credit instalments of the purchase?

A. I can only say as I said before, that I am not positive as to the rate of interest we were to pay M'r Taylor.

Q. What is your best recollection on that point?

A. My best recollection is that it was less than ten per cent., but it might have been ten.

Q. How much less than ten?

A. If a certain amount of money remaining unpaid was paid within a certain length of time, which I can't fix now, the rate was to have been 7 per cent., and if a certain other sum was paid in a shorter time, there was to be no interest charged on it.

91 Quest. Was the property to be conveyed to yourself and M'r Blake jointly?

A. That, I suppose, was the arrangement to start with.

Q. Was it not one of the reasons for the abandonment of the arrangement, that if you went into it at all you wanted a title in fee without condition?

A. That is what I wanted originally.

Q. Was not that one of the reasons for your refusal to consummate the arrangement?

A. It might have been. M'r Blake tried to have Howland consent to have Isaac Taylor convey to me an undivided half without conditions. M'r Blake represented to M'r Howland that if I wouldn't carry it with him that way he had better let the half of it go in fee.

Q. May not this have been before the foreclosure sale?

A. Possibly it might. I know we talked considerably before the sale and talked after the sale.

Q. Why did you want a separate deed for an undivided half of the property?

A. M'r Blake said that after paying the first $1,000, which was all the money he proposed to put into it, and I had at that time some money laying idle, and I didn't want to pay interest at the same time, so I proposed to take the benefit of M'r Taylor's proposition and pay down and get the reduction of interest.

92 Q. In desiring a separate deed for an undivided half of the property, was you still intending that the property should go back to Howland when the property should repay you your investment?

Ans. I expected that would be as I could arrange with M'r Howland.

Q. Then that was not fully determined upon at that time, was it?

A. It was, if the arrangement had been completed as we talked.

Q. At the time you desired a deed of the undivided half, was it so far settled between yourself and M'r Howland, that upon repayment of your investment that undivided half should go back to him?

A. As I said before, I was trying to get a warranty-deed without conditions for an undivided half for the am't of money we were to pay, but M'r Howland would not consent to it.

Q. Now, was not M'r Howland's refusal to so consent the reason for your refusal to go on with the arrangement?

A. I think in a measure it was; perhaps it was one of the main reasons.

Q. To what Howland do you refer in your testimony?

A. Richmond W. was doing the talking and Eugene was the owner.

93 Q. In the talk about this arrangement and about a reconveyance of the property, was any other Howland mentioned than Richmond W.?

A. I don't think that the name of any Howland, either Eugene or Richmond W., was mentioned, to my recollection. I might have inferred.

Q. Do you now remember that M'r Howland, in conversation with you and the other parties, talked in any other manner than of himself and his interest in the property?

A. I can answer it in this way, that an outside party not knowing anything about the circumstances would think in his conversation that he meant Richmond W.

Q. Upon reflection, do you not now remember that the interview mentioned at which the arrangement was talked about was had in the court-room during the term at which the foreclosure judgment was rendered?

A. From my best recollection that interview took place in the court-room and in court time, but cannot say whether it was at that term or at a subsequent term.

Q. Is it not your recollection that at the time of that interview $9,300 was due Isaac Taylor?

A. I have that impression in my mind, that was the sum we were to pay him. It is my understanding that the amount M'r Blake and I were to pay M'r Taylor was the amount due him, and I am strongly

94 of the impression that the amount was about $9,300.

Quest. How long after the interview between yourself, Blake,

and Taylor, when the proposed arrangement was talked about, was it before you had the final talk upon the subject with Blake & Howland?

Ans. I can't tell. I don't think it was a great while. It was after the sale.

Redirect ex'n:

Q. In this transaction did M'r Blake appear to be the friend & adviser of M'r Howland?

(Objected to as incompetent.)

A. I so understood it.

H. T. TAYLOR.

95 *Deposition of W'm H Jenks.*

SATURDAY, *December 20th*, 1873.

Present, same parties before mentioned.

WILLIAM H. JENKS, being duly sworn as a witness on behalf *on* the complainant, deposes & says:

I am 49 years old. My occupation is a carpenter and joiner, and I live in Racine; have lived there since the spring of 1850. I know the complainant and the defendants in this suit. I have known M'r Eugene Howland ever since we were boys; we were brought up together. I have known M'r Blake since I came to Racine. Have not known M'r Elliott so long, probably 14 or 15 years. I know the property known as the Howland block in Racine. I first knew that property shortly after I came to Racine in the spring of 1850. I came there with Eugene Howland.

Q. Were you familiar with the value of real estate in Racine in the spring of 1863?

A. Only from a general knowledge of sales that were made.

Q. What, in your judgment, was the value of the Howland block in 1863?

(Objected to by de'fts' counsel, because the witness has not shown himself a competent witness on that subject.)

A. I should think it was worth from $20,000 to $24,000, according to my judgment of the price of real estate at that time.

96 Q. Were you acquainted with Isaac Taylor, of Racine, in his life-time?

Ans. Yes, sir.

Q. Did you ever have an interview with him in relation to this property?

A. Yes, sir; I should think it was in the first part of July, 1862, as near as I can get it.

Q. How did that interview come to take place?

(Objected to as immaterial & irrevalent.)

A. I was sent for to come to M'r Taylor's office, and I went there.

Q. What took place at that interview?

(Objected to as incompetent & immaterial.)

A. M'r Taylor made a statement in regard to the property at the request of R. W. Howland.

Q. What was the statement?

(Objected to as incompetent & immaterial.)

A. M'r Taylor stated that he held the property, and whenever the rents would pay what he had advanced in material for the erection of the building and moneys, that the property should go back. He stated

that as the arrangement he had with M'r Howland. He made a remark that he had the title of the property perfect. During our conversation he spoke of holding the Widow Wright property in a similar way.

Q. What did he say about that?

(Objected to as irrevalent & immaterial.)

97 A. That he had held that property quite a number of years, receiving the rents for the moneys he had advanced for the erection of the property.

Q. How did he come to speak of it in that connection?

(Same objection as last.)

A. M'r Howland didn't seem exactly easy; didn't seem exactly satisfied with regard to the Howland block. He, M'r Taylor, spoke of the Widow Wright property; that he had held it in a similar way, and he had always carried out his agreements to the letter; as he had agreed.

Cross-ex'n:

Q. Have you ever been a dealer in real estate in Racine?

A. I had this property once.

Q. Was it before or after the building was erected?

A. Before.

Q. Did you own all the ground on which the present building stands?

A. I owned an undivided half. I bought it and took the deed of the whole with the understanding I was to deed an undivided half.

Q. To whom did you deed the undivided half?

A. To Eugene Howland.

Q. Who paid for the lot before you deeded to Howland the undivided half?

A. It was myself and M'r Oziah Howland who advanced the money for Eugene Howland. Oziah Howland was the father of Eugene.

Q. How much was paid for the entire lot?

98 A. The purchase-money was $3,000.

Q. Was any other land bought in connection with that lot at the same time?

A. Yes, sir.

Q. Was $3,000 the purchase price for all the land purchased?

A. Yes, sir; it was.

Q. How much more land than this one lot was purchased?

A. There were two lots in the rear that ran down to the bluff, making three lots in all.

Q. How much did you pay for your undivided half?

A. I gave $250 down, and was to pay $1,500 in all.

Q. What did you eventually do with your half?

A. I sold it; in the end it went to Eugene Howland.

Q. To whom did you first sell it?

A. To one Otis L. White.

Q. What did he do with it?

A. I think he held it about a year or more and then gave it up; said he couldn't pay for it, and it came back to me, and I sold it to Eugene Howland.

Q. With whom did you negotiate the sale of your half?

A. With R. W. Howland.

Q. At the time you purchased the lot & conveyed one-half to Eugene Howland, did you not know or learn that Richmond W. Howland was the real party in interest?

A. No, sir; I did not.

99 Q. Did you not subsequently learn that to be the fact?

A. No, sir.
Q. Have you dealt in real estate in Racine as a business?
A. I have not.
Q. What property did you own in Racine in 1863?
A. My homestead & no other.
Q. Have you ever owned, bought, or sold any other real estate in Racine than a homestead & the lot in question which you purchased before the building was erected?
A. I have not in the city of Racine.
Q. Is it not true that in 1863 there was a poor demand for real estate in Racine, and that it was greatly depreciated in value?
A. From the price of labor I should think it was about the same it had been; labor was higher.
Q. Is it not true that there was considerable real estate in Racine at that time that was unsaleable?
A. I presume there was, and a good deal that is not saleable any way.
Q. Have you any other knowledge of the value of real estate in Racine in 1863 than the price of labor?
A. Well, labor & material both were higher than they had been. With the exception of my general knowledge, those were the things, of course, that I would notice.
Q. What sales of real estate transpired in Racine in 1863 within your personal knowledge?
100 A. I don't know any particular sales in that year.
Q. When did you have the interview with Isaac Taylor spoken of?
A. Think it was in the forepart of July, 1862.
Q. What enables you to remember that as the particular time?
A. I moved into the jail some time in July, about the middle or a little before, and the interview was before I moved into the jail. I think while I was living in my own house.
Q. Where did you have the interview with M'r Taylor?
A. In the front office on second st., near the lake, at M'r Taylor's office in his lumber-yard.
Q. Did you go there with any one at the time?
A. I did not.
Q. Upon what business did you go there?
A. I did not know what the business was when I went there.
Q. Did you go there by appointment with any one?
A. I did. I understood M'r Taylor sent for me. That was the understanding I had at the time.
Q. Who spoke to you about going there before you went?
A. I don't know as I remember who it was.
Q. Did you have any conversation with Richmond W. Howland before you went to M'r Taylor's office?
A. I don't think I did; don't remember of any; don't think I saw him until in the office.
Q. Are you unable to state positively who sent for you or who
101 asked you to go there?
Ans. I do not remember who it was asked me to go there.
Q. Are you certain you were asked to go?
A. I am.
Q. Did you at that time know R. W. Howland?
A. I did.
Q. How long had you known him?
A. Ever since we were boys.

Q. Was he at M'r Taylor's office when you got there?
A. He was.
Q. Did you do any business there at that time?
A. I didn't transact any business.
Q. Were M'r Taylor & M'r Howland talking when you went in?
A. They were; they were sitting in the front office.
Q. Who was present at that interview?
A. M'r Taylor, M'r Howland, & myself were in the front office. I think I saw M'r Kelly in the back office. I don't think M'r Kelly was in the front office while I was there.
Q. Was there an opening in the partition between the front & back office?
A. There was.
Q. What did you see M'r Kelly doing?
A. He was sitting at a desk writing.
Q. Did the desk face the opening?
A. I think he sat facing the east; the side of his face was toward the opening.
Q. How far was he from you?
102 A. Probably ten feet. It might have been a little more or it might not have been over that.
Q. Was the opening in the partition unobstructed?
A. There was no window in it, & it was unobstructed.
Q. What did you say in that conversation?
A. I don't think I said anything at all.
Q. Was anything said to you?
A. M'r Taylor made a statement to me, in regard to the property, at M'r Howland's request.
Q. When you went in, was anything said to you as to the object of your coming there?
A. Yes; M'r Howland made a remark to M'r Taylor that M'r Jenks was here, and he would like to have him make the statement.
Q. How long were you there?
A. I don't think I was there over half an hour.
Q. What time in the day was it?
A. I think it was about 10 o'clock, or between 10 and 11.
Q. Did you perform any work upon, or furnish any materials for, the building now situated upon the lot in question in this suit?
A. I did not.
Q. Did you manufacture or furnish any materials of any kind that were used upon the building?
A. I did not.
Q. Were you appointed deputy sheriff at about the time you moved into the jail?
A. I was. I was then city marshal, and moved in, I should think, within a week after my appointment.
103 Ques. What did you get for the undivided half of the property you sold to Eugene Howland?
A. I got a promise to pay White's obligation. That was nearly $400. He took it subject to the mortgage which was on it.
Q. Have you ever been paid the $400 which you speak of?
A. I have not.

Redirect ex'n:

Q. You said that the original purchase covered two lots in the rear of the one on which the building stands; how are those lots situated, and

what was their value at that time in comparison with the lot fronting on Main street?

A. They lay in the rear on the bluff. We didn't consider them of much account at the time. There was no road that went to them.

Q. Who represented Eugene Howland in your negotiations for the original purchase of this property?

A. M'r Oziah Howland & M'r Richmond W. Howland were both present.

Q. Isn't the situation and character of this property such as to make it the most desirable and the most saleable business property in Racine, and was it not the most desirable & most saleable piece of business property in Racine in the year 1863?

(Objected to for the reason that the witness has not shown himself competent to testify on that subject.)

104 A. I think there was none better in the city of Racine. It is in the centre of the business part of the city—the central point for business.

Q. What was your occupation at the time you rec'd the appointment of deputy sheriff in the year 1862?

A. I was city marshal.

Q. Did you resign your position as city marshal before you took possession of the jail as deputy sheriff?

A. No. I held both offices at the same time.

W'M. H. JENKS.

Deposition of D'r M. R. Teegarden.

DECEMBER 20TH, 1873.

Same parties present.

D'r M. R. TEEGARDEN, being duly sworn as a witness on behalf of the complainant, deposes & says:

I am 56 years old; live in Racine, and am by occupation a physician and surgeon. Have resided in Racine 28 years or a little over. I know Eugene Howland, the complainant, and also Blake and Elliott, the defendants in this suit. I knew Isaac Taylor of Racine. I am acquainted with the property on Main street in Racine known as the Howland block.

Q. Did you ever have a conversation with Isaac Taylor in reference to this property? State when it was and what it was.

(Objected to as immaterial & irrevalent.)

105 Ans. I did. It was in the fore part of March, 1863. I spoke to M'r Taylor one morning as he was going down street past my house. Says I, "I understand you foreclosed the mortgage on the Howland block." He said he had, and said he had done it to secure himself. He then said that as soon as they paid him what he had advanced and interest it reverted back to them. That was about all the conversation about it at that time. Afterwards, about the last of March or first of April, 1863, I had another conversation with M'r Taylor. I think it was a couple of weeks after the first, or it might have been three weeks. I went down to M'r Taylor's office to buy the property. M'r Taylor advised me to have nothing to do with it, as a friend of mine he advised me, for, says he, I have an agreement or arrangement with M'r Howland that if they paid him up the principal and interest the property was to revert back to them. He said the building was rented well, and he was applying the rents to the principal and he thought they would pay it up eventually. He then said that he couldn't give me a clear title to it

any way, as he had made that arrangement with them, and he advised me not to have anything to do with it or I might have trouble. He advised me to buy property that I could buy clear & unencumbered & have no trouble with it.

106 Q. What was the character of this property in comparison with the other business property in Racine as to its being saleable in 1863?

A. It was as good property for business as any on Main street; probably the best at that time.

Q. Were you familiar with the value of real estate in Racine in the year 1863?

A. I was buying and selling and owning property there then; owned property on the other side of the street.

Q. What was the property worth in 1863?

A. From $18,000 to $20,000 I should say. I had made up my mind what I would give for it.

Q. What had you made up your mind you would give for it?

(Objected to as incompetent.)

A. $18,000.

Q. Would you have given that for it?

A. Yes, sir; if I could have got the time that M'r Bennett said I could get on it. M'r Bennett figured up the rents and advised me to buy it if I could get it for that sum.

Q. What, in your judgment, is that property worth now?

A. I think the property is worth from $20,000 to $25,000.

107 Cross-ex'n:

Quest. On which side of Main street is this building?

A. On the east side.

Q. Is it not true that in 1863 store buildings on the west side of Main street fronting east were much more saleable than buildings on the east side?

A. I do not think they were.

Q. Is it not true that store buildings on the west side of that street in 1863, and prior to that time, commanded a higher rent then buildings on the east side?

A. I don't think they did; not in that block. That was the best location and the best store in that block or the opposite block. I knew that the tenant in it paid a higher rent for it than the tenants on the opposite side of the street.

Q. Do you mean to say that rooms for store purposes in the Howland block, at the time mentioned, rented for more than any store-room in any building in the opposite block on the west side of the street?

A. I do, from what I was told.

Q. For what did store-rooms in the Howland block rent in the year 1863?

A. One of them, I was told by the man that occupied it, the store Charley Booth, rented for $800. I don't know what the others rented for.

Q. When did Booth occupy a store in that block?

A. I think in 1862 & 1863, or in 1861 & 1862. I would not be positive.

108 Q. How long did he occupy it?

A. I think he was there two years.

Q. Was Booth occupying the store when you went to see Taylor about purchasing the property?

A. I think not.
Q. When was the building erected?
A. I think in 1859 and 1860.
Q. How many rooms in the building did Booth occupy?
A. The south store.
Q. Have you any personal knowledge as to the rents received for any of the rooms in that building in 1863?
A. I have.
Q. What rooms?
A. Masonic Hall.
Q. What did that rent for in 1863?
A. Two hundred dollars a year.
Q. Did that comprise the whole of one story of the building?
A. Yes, sir; the upper or fourth story.
Q. Is it not true that the west side of Main street has for many years been regarded as most desirable for business purposes?
A. I think there was a time when the west side was more desirable than the east side.
Q. Has that not been the case since the Howland block was built?
109 A. I don't know. I think the stores on that block commanded a higher rent than any on the west side except in the Titus block. I give that as my opinion. I don't know what the property on either side rented for, only from what people told me, except the store I owned myself.
Q. Did not the demand for store-rooms on the east side of the street begin when the post office was established on that side?
A. I couldn't say. The stores have been occupied all the time since the building was built.
Q. Who was present at your first conversation with M'r Taylor?
A. Not any person.
Q. When was it?
A. It was in March, 1863.
Q. What time in March?
A. I think it was near the first of the month.
Q. What enables you to remember that as the time?
A. I was sweeping snow off the sidewalk at the time. M'r Taylor came down street and I spoke to him.
Q. Does that circumstance enable you to remember that it was about the first of March?
A. I know it was in the spring after I moved up there—the house where I now live. There had been a fall of snow on the ground, and from other things that occurred afterward, I know it was about that time.
110 Q. When did you move into the house where you now live?
A. In August, 1862.
Q. Who was present at the time you had the interview with M'r Taylor at his office?
A. M'r Murray and a Dane that measured lumber for them.
Q. Where was the conversation had?
A. Down in the office at the lumber yard.
Q. Did M'r Murray take any part in the conversation?
A. He did not.
Q. How long were you there?
A. Probably half an hour.
Q. When was this?

A. It was about 7 o'clock in the morning, on a Tuesday in March, 1863, towards the latter end of March.

Q. Any one else present beside the persons named?

A. I think no one else was present at the time.

Q. When did you talk with M'r Bennett about buying the Howland block?

A. It was the Monday evening previous to this conversation.

Q. Do you mean C. W. Bennett, then an attorney at Racine?

A. Yes, sir.

Q. When did he figure up the rents?

A. On Monday evening before I went down to see M'r Taylor.

Q. Did he advise you to buy the property?

111 A. He did.

Q. Did you or M'r Bennett understand it was for sale at that time?

A. I can give you M'r Bennett's words. I understood nothing but what M'r Taylor had then told me, and what M'r Bennett then told me. He told me then it could be bought.

M. R. TEEGARDEN.

Deposition of Lucas Bradley.

TUESDAY, *December 23rd*, 1873.

Present, same parties before mentioned.

LUCAS BRADLEY, being duly sworn as a witness on behalf of the complainant, deposes & says:

My age is 64; my occupation is an architect and builder, and I reside at Racine. Have been engaged in that business about 44 years. Have resided in Racine 29 years. I don't know M'r Eugene Howland, the complainant in this suit. I know Blake and Elliott, the other parties. I know the property on Main street in Racine known as the Howland block. I have made an estimate of the cost of the construction of that building at the time it was constructed, as near as I could get at it. I went into the building and went through it, first into the basement,

112 and took measurements there of dimensions of timber, &c., and I passed all through the buildings, the different stories, and took measurements throughout; counted all the openings, the doors and windows; took the length and height of rooms, thickness of walls; took the height of the stories, the division of the rooms. I looked through the building and made a sketch of the second, third, & fourth stories, and then made an estimate of the excavating; the amount of stone that went into the basement, as near as I could get at it; the amount of bricks in the walls, rough timber, scantling and joists that went into the floors & roof, and all the timber that went into the construction, as near as I could get at it, and I estimated the cost at the cost of material and labor at the time it was built.

Q. What was the aggregate amount of the cost of constructing the building according to the estimate which you made?

(Objected to as incompetent, irrevalent & immaterial.)

A. About twenty-one thousand dollars.

Q. Was that estimate confined to the building itself, or did it include the cost of out-buildings, cistern, sidewalk, &c.?

(Objected to as above.)

A. It included cistern and privy, but not sidewalk. $21,100 in-

113 cluded the cistern and privy which were in the rear of the building, and it included a drain or sewer from the building.

Q. Do you consider that a fair estimate of the cost of constructing the building at the time it was constructed?

A. As near as I could get at it. There may have been some items I did not get accurately. My papers were burned, and I could not refer to them for that reason, but made my estimate on my recollection of the cost of material at that time, and on inquiries made of others.

Q. When was this estimate made?

A. Yesterday and last evening.

Q. At whose request was it made?

A. M'r R. W. Howland's.

Q. Was it made in connection with any other person, and who?

A. Yes; M'r Thomas H. Davis, of Racine, who is a builder.

Cross-ex'n:

Q. When was the building constructed?

A. I think in the years 1857 & 1858. Perhaps not completed until the year 1859; I don't remember the exact time.

Q. In making your estimate, were you able to remember accurately the prices, at the time the building was erected, of such labor
114 and materials as were required in its construction?

A. I thought so.

Q. Did you personally remember yesterday the prices of all such labor & materials in 1857, 1858, and 1859?

A. I think I did. I did most of them. I made inquiries as to some. I relied on my own recollection mainly, strengthened by inquiries. My own recollection was pretty clear as to most of them.

Q. Of whom did you make inquiries?

A. Of M'r Davis.

Q. What was the price of brick per thousand when that building was constructed?

A. Good merchantable brick delivered on the ground where building were worth about $7.00 per thousand.

Q. How many brick were used on the building?

A. As near as I could get it, 586,000.

Q. What was the price of stone per cord when the building was built?

A. Stone delivered on the ground was about $7 a cord, and including morter and laying about $14.00 a cord.

Q. What was the cost of mason-labor per day at that time?

A. My recollection is that it was about $3.00 a day; that is, in the spring & summer of 1857. I should think in 1858 & 1859 it was about $2.50 to $2.75.

Q. How many cords of stone were used in the foundation?

A. I estimated seventy cords.

115 Q. What is the thickness and height of the foundation walls?

A. The side walls of the basement & the front walls were of stone, 8½ high—9½ from the footings to the top of the main floor joists. The rear walls were about 2 feet high and 2½ feet thick. There was also a stone foundation under the partition wall which I assumed to be two feet thick and two feet high. The partition walls in the basement were of brick, about ten feet high from the stone to the top of the main floor joists.

Q. Now, give the prices of all other materials in the building, at the time it was constructed.

A. I estimated the price of long joist and timber over twenty feet at $22.00 per thousand feet; rough lumber, joist, & scantling less than 20

feet in length, $15.00 per thousand feet. That I recollect was the regular price at the yards. Fencing surfaced for the lining of floors, $17.00 per thousand feet. Good sound flooring, dressed & matched, $28.00 per thousand feet. The price of plastering was 25c. per yard, material and labor. The roofing, I think, was about $7.00 a square, material and labor. Ten feet square we usually call a square. I estimated 56 squares on the roof.

Q. What kind of a roof was originally put upon the building?

A. I can't describe it. It was a patent roof, made one layer
116 of felt, then one of canvas, and some kind of cement put over it with sand.

Q. What was the quality of the original roof?

A. I think it was bad.

Q. Is the roof that is now on the building the same that was originally put on?

A. I don't know whether it is or not. I never knew it was taken off. If it was not taken off, another one was put on over it.

Q. Which roof did you take into consideration in making your estimate of its cost?

A. It was the first one, which I think was just about $7.00 a square. The cost of the other one was about the same.

Q. Was the first roof, in your judgment, $7.00 a square?

A. I don't think it was, as it has proved.

Q. What was the price of lath when the building was constructed?

A. I can't speak definitely as to that. I should think it was about $4.50 or $5.00 a thousand feet.

Q. How much lath was used on the building?

A. About 40,600 feet.

Q. What was the price of doors & sash, at the time the building was constructed, that were used in the building?

A. The doors were about $4.50 each. The sash would vary. I think they would average about $3.00 a window, without the glass.
117 The sash for the back windows about $2.00 each, and for the front windows about $4.00 each, without the glass.

Ques. How many doors are there in the building?

A. There were 38 inside doors; part of them have top-lights over them with sash. There are six double outside doors in the rear with top-lights and sash over them. When I spoke of the price, I meant only the inside doors without any frame or casing.

Q. How many windows are there in the building?

A. Two skylights in the roof, 18 front windows, three double windows in the basement, 16 lights, each 11×18, three double windows in the rear of the main story, 20 lights each, size 11×20, twenty windows in the rear on the third & fourth stories; in the partitions in the second & third stories there are four single windows, three of them have 16 lights each and one of them 40 lights. There is also a glass and panel partition in the second story, contains about 180 feet of sash and glass and panelling. There are twelve windows in the store fronts.

Q. What was the price of such window-glass as was used in the building at the time it was built?

A. The glass for the building cost $243.00, aside from the skylights; they cost a little over $11.00. I can't now state the price of window-glass at that time, but was enabled to get at the original bill of
118 the glass furnished, and relied upon that.

Q. Who showed you the bill?

A. M'r Howland.

Q. Where was the glass purchased?

A. I understood from Langlois and Robelleord.

Q. In examining the building or making your estimate, did M'r R. W. Howland inform you of the cost of any other materials used in the building?

A. He spoke of some other items.

Q. Did he inform you of the cost of any of the labor in construction?

A. I think not; I don't remember that he did.

Q. What was the price of the labor of competent mechanics per day at the time the building was constructed?

A. $2.50 per day for carpenters & joiners.

Q. Do you know what period of time the building was in process of construction?

A. I do not know the entire length of time it was being constructed. I did not take any part in its construction.

Q. Are all the floors in the building double or single floors?

A. Part of them double and part single. The basement has a single floor. The main floor was double. The second, third, and fourth floors were single. I so estimated it.

Q. Did you make your estimate of the cost of the building, except the roof, as it now is?

119 A. No, sir; as it was originally constructed. I understood that a brick wall in the third story has been taken out and its place supplied by posts and braces. I noticed one door that had been put in since in the 4th story. I don't remember any other changes from the original plan I took into consideration.

Q. Have you knowledge of any other changes in the building from its original plan made by Blake and Elliott?

A. I think I went on the roof once with M'r Blake, and suggested some changes to conduct & keep the water from the side of the building. I have understood since that he made some changes of that kind. I do not know of any other changes.

Q. In going through the building, were you able to determine positively the character of all the materials used in its construction?

A. Mainly. I couldn't see the joists, of course. I couldn't see the inside of the walls, but judged that they were constructed throughout of the same character of brick that appeared on the outside.

Q. Could you determine positively the quality of all the timber and materials of that character used in the building?

A. So far as the main-floor joists were concerned, I could, as they could be seen from the basement, but the others I could not, of course, because I could not see them. Part of the ceiling joist and rafters

120 of the roof I could see, and, so far as I discovered, these were of good merchantable quality.

Q. Did you observe the quality of the plastering in the building?

A. I did. I noticed that in the middle store, in the second story, the plastering was off the ceiling considerably, and in that store the plastering had either been taken off or covered with thin ceiling boards bat-'oned over the joists.

Q. How much time did you spend examining the building preparatory to making your estimate?

A. Nearly all the afternoon. I should judge from one o'clock to 4.

Q. Do you know of your personal knowledge, and independent of your estimate, what the building cost?

A. No, sir.

Q. Do you know of your personal knowledge who built the cistern and privy connected with the building?

A. I do not.

Q. Have you made your estimate upon the basis of a contract on which you would take the construction of the building?

A. That was my endeavor, without reference to any other consideration.

L. BRADLEY.

121 *Deposition of Ja's H. Kelly.*

DECEMBER 23, 1873.

JAMES H. KELLEY, being duly sworn as a witness on the part of the complainant, deposes & says:

I reside in Racine. Am 58 years of age, and by occupation am dealer in lumber. Have resided in Racine since 1858. I know the parties to this suit. I knew Isaac Taylor in his life-time. We were partners together in business from 1858 to 1864. George Murray was also a partner with us. I kept the private accounts of M'r Taylor in part. I kept them in the spring of 1863. When I was not in, M'r Murray made entries in the books, and when I was there I made them. I have with me the account-book of M'r Taylor for the year 1863. There is an account in that book with "Howland Building," on pages 10 and 11 of the book. The entries are in my handwriting, with two exceptions, which are in George Murray's handwriting, on page 10, and are "Payment to John Conroe, and a bill of iron for windows," dated April 9th and 15, 1863, amounting to $6.62 both together.

The entries are as follows:

(Page 10.)

Howland Building, Dr.

1863.			
Jan'y 1.	To amount for same.....		9,650 00
April 9.	" John G. Conroe's bill of iron & screws.....		5 32
" 15.	" iron for windows.....		1 30
"	" int. & profit for int. on investment to April 1..		635 25
			$10,291 87

122 (Page 11.)

Howland Building, Cr.

1863.			
April 18.	By sale to Blake and Elliott.....		10,000 00
	" rents from Jan'y to April—		
	" Sanford and Tapley to April 1....		50 00
	" Lyon and Adams " 1....		25 00
	" Burch & B. " 1....		82 50
	" B. F. Weeks " 1....		75 00
	" Paine and Millett " 1....		31 25
	" C. W. Bennett " 1....		28 12
			$10,291 87

I made these entries at the request of M'r Taylor, at the times they were made according to their dates. This is the last account I know anything about, and it is not carried forward to any other book, and these are the original entries.

(It is stipulated that the foregoing copy of entries in the book produced by the witness shall be regarded as of the same force as evidence as if the book in which the same are were offered in evidence.)

This book was started January 1, 1863, to show an inventory of M'r Taylor's property on that date, and with the intention of keeping his accounts in it. On page 8, under date of April 18, 1863, I entered, as bills receivable, Blake and Elliott's notes as follows:

Ap'l	18.	Blake and Elliott,		6 mo.,	Oct. 18, '63.....	750	00	int.
	18.	do.	do.	12 "	Ap'l 18, '64.....	750	00	"
	18.	do.	do.	18 "	Oct. 18, '64.....	750	00	"
123	18.	do. "	do.	24 "	Ap'l 18, '65.....	750	00	"
	18.	do. "	do.	30 "	Oct. 18, '65.....	750	00	"
	18.	do. "	do.	36 "	Ap'l 18, '66.....	750	00	int.
	18.	do. "	do.	42 "	Oct. 18, '66.....	750	00	"
	18.	do. "	do.	48 "	Ap'l 18, '67.....	750	00	"
	18.	do. "	do.	54 "	Oct. 18, '67.....	750	00	"
	18.	do. "	do.	60 "	Ap'l 18, '68.....	750	00	"

Opposite the foregoing entries, & on page 9, are the following entries:

1863.

July	21.	By cash.....	758	13
	25.	" do.....	747	74
	27.	do.....	743	88
		do.....	1,442	91
Nov.	19.	By cash }		
	19.	}	1,392	79
"	23.	By cash }		
	23.	}	1,402	06

The above entries show the payment of all the above notes except one. There is an entry on page 126 under the head of invoice, May 2nd, 1864, shows one note of Blake and Elliott's on hand. There was one note that was given without interest, payable on 30 mo's, and this I should think was that one from the looks of the books. The entries on pages 8 and 9 above mentioned, in reference to the notes and their payment, is in my handwriting. The entry of the note remaining on hand May 2, 1864, is also in my handwriting.

124 Q. In whose charge have the books & papers of M'r Taylor been since his death, and in whose charge are they now?

A. In the charge of M'r Murray & myself. They were in my individual charge from the time of M'r Taylor's death until M'r's Taylor's death, and from her death to the present time they have been in charge of M'r Murray & myself, two of her executors.

Q. Have you examined these papers to ascertain if the writing in the form of a surrender of the Howland block made by M'r Howland to M'r Taylor about 1860 is among them?

A. I have examined M'r Taylor's papers since his death a great many times, looked every one over carefully, and have never seen any such writing. I have examined what papers are in our possession lately to see if there was any such paper, and have not been able to find any such paper.

Cross-ex'n:

Q. In your ex'n of M'r Taylor's papers have you ever seen any paper or memorandum whatever showing any agreement or understanding concerning the Howland property, and showing or indicating that his title thereto, while he held it was not absolute?

A. I have never seen any such paper.

Q. Have you ever seen any such memorandum upon any of the
125 books kept by M'r Taylor or by you for him?

A. I have not. I know nothing of it except what appears on the book before referred to.

Q. Were you, for many years prior to M'r Taylor's death, familiar with his habits of business, and his most intimate & confidential business friend?

A. I was very familiar with his business and his way and manner of doing business, and perhaps should say was one of his most confidential friends.

Q. From the time you came to Racine until M'r Taylor's death did he not entrust to you the supervision of his business at Racine?

A. He did during his absence. When he was at home he did his own business.

Q. Does not the book from which the foregoing entries are taken show accounts debit and credit with other pieces of property which he owned?

A. It does.

Q. Name a few accounts upon the book kept similarly to that with the Howland building, referring to pages.

A. On pages 46 and 47, under the head of T. W. Wright, shows a bond & mortgage on the 1st of April, 1862, of a dr. and cr. On this he collected the rents which appear on the cr. side of the a/c, on page 47.

On pages 64 and 65 is an account dr. & cr. of schooner D. Slawson,
126 showing her value and what he received for her. On pages 66 and 67 is an account of schooner Norway, showing her value & what he received for same. On page 76 and 77 is a pork and corn account with S. D. Clough, showing the investment and the losses on the same. On pages 84 and 85 is an account dr. and cr. with "George Steele and J. Taylor, under firm of Steele and Taylor, Chicago Elevator." The dr. side shows the different amounts of money he paid out at different times on a/c and for that elevator. On pages 86 and 87 is an account with "Two River Pier," dr. and cr. The debit side shows the money invested, and the cr. side shows what he got for it and rents received on account of it. On pages 92 and 93 is an account of the "Two River property," dr. and cr. The dr. side shows the am't he paid for it, and the cr. side the amount he got for it. On pages 108 and 109 is an account with "Muskegon Mill," dr. and cr. The dr. side shows what the mill cost him, and the cr. side shows what he got for it. On pages 190 and 191 is an account with "Main-street lot," dr. and cr., which is a lot on Main street in Racine, which he bid off at mortgage foreclosure. The dr. side shows his original investment, and taxes paid by him, and the cr. side shows what it sold for. It was sold by M'r's Taylor in 1866, after M'r Taylor's death.

127 Q. Was it not M'r Taylor's habit to keep a dr. and cr. account with all real estate which he owned?

A. I think it was, with the exception of his farm and his homestead.

Redirect ex'n:

Q. Refer to pages 46 and 47, account of T. W. Wright. Is that account carried to another page?

A. Yes, sir.

Q. What are the debits in this a/c made up of; that is, the general character of them?

A. Amount due on bond & mortgage, taxes paid on the property, money advanced, and the interest on the bond.

Q. What are the credits made up of?

A. Rents received from the mortgaged premises.

Q. On pages 188 and 189 does the dr. side of the account appear to be balanced by the credits of rents and money?

A. It does; about one-half in rents and the other half in money.

Q. Look at page 64. Give the entries of the dr. side of that account as entered.

A. 1863.

Jan'y 1st. One undivided ½ of schooner D. S. with Daniel Slawson, valued at	$4,500	00
To loss	458	50
(Error in footing)	4,988	50

Q. Look at page 66. Give the entries of the dr. side.

128 A. 1863.

Jan. 1. Schooner Norway, value this day	$4,500	00

On page 76 the entries on the dr. side are as follows:

1863.

Jan. 17. To loss on pork, 1860	3,076	84
" " " " 1861	2,257	76
	$5,334	60

On page 86 and 87 the entries on the dr. side are for repairs, taxes, and what he paid to M'r Wheeler for his proportion of the pier. The property was obtained on foreclosure. The cr. side shows rents received for it, and the am't he received for it. The dr. & cr. sides balance. The property appears to have been sold to M'r N. Pendleton, a former partner of M'r Taylor's, and a lumberman at Two Rivers. The am't of the sale to Pendleton is the last item on the cr. side of the account. On pages 96 and 97 the only entry on the dr. side is, "1863. Jan'y 19. Cash paid G. S. for real estate, $15,000.00," and the only item on the cr. side is, "Transferred to a/c of Steele and Taylor, $15,000.00."

JA'S H. KELLEY.

129 *Deposition of Thomas H. Davis.*

WEDNESDAY, *December 24th*, 1873.

Present, same parties before mentioned.

THOMAS H. DAVIS, being duly sworn as a witness on behalf of the complainant, deposes & says:

My age is 48; am carpenter and builder by occupation, and reside in Racine; have been engaged in the business since I was 9 years old, and contractor for 10 years past; have lived in Racine about 16 years; I know the parties to this suit; I know the property on Main street in Racine known as the Howland Block; I have examined that building for the purpose of making an estimate of its cost at the time of its construction; I made the ex'n last Monday—the day before yesterday—at the request of M'r R. M. Howland; in making the examination we commenced at the basement and examined the walls and took their dimensions, and also the floors and joists, and went through each story the

Cross-ex'n:

Q. In your ex'n of M'r Taylor's papers have you ever seen any paper or memorandum whatever showing any agreement or understanding concerning the Howland property, and showing or indicating that his title thereto while he held it was not absolute?

A. I have never seen any such paper.

Q. Have you ever seen any such memorandum upon any of the
125 books kept by M'r Taylor or by you for him?

A. I have not. I know nothing of it except what appears on the book before referred to.

Q. Were you, for many years prior to M'r Taylor's death, familiar with his habits of business, and his most intimate & confidential business friend?

A. I was very familiar with his business and his way and manner of doing business, and perhaps should say was one of his most confidential friends.

Q. From the time you came to Racine until M'r Taylor's death did he not entrust to you the supervision of his business at Racine?

A. He did during his absence. When he was at home he did his own business.

Q. Does not the book from which the foregoing entries are taken show accounts debit and credit with other pieces of property which he owned?

A. It does.

Q. Name a few accounts upon the book kept similarly to that with the Howland building, referring to pages.

A. On pages 46 and 47, under the head of T. W. Wright, shows a bond & mortgage on the 1st of April, 1862, of a dr. and cr. On this he collected the rents which appear on the cr. side of the a/c, on page 47.

On pages 64 and 65 is an account dr. & cr. of schooner D. Slawson,
126 showing her value and what he received for her. On pages 66 and 67 is an account of schooner Norway, showing her value & what he received for same. On page 76 and 77 is a pork and corn account with S. D. Clough, showing the investment and the losses on the same. On pages 84 and 85 is an account dr. and cr. with "George Steele and J. Taylor, under firm of Steele and Taylor, Chicago Elevator." The dr. side shows the different amounts of money he paid out at different times on a/c and for that elevator. On pages 86 and 87 is an account with "Two-River Pier," dr. and cr. The debit side shows the money invested, and the cr. side shows what he got for it and rents received on account of it. On pages 92 and 93 is an account of the "Two River property," dr. and cr. The dr. side shows the am't he paid for it, and the cr. side the amount he got for it. On pages 108 and 109 is an account with "Muskegon Mill," dr. and cr. The dr. side shows what the mill cost him, and the cr. side shows what he got for it. On pages 190 and 191 is an account with "Main-street lot," dr. and cr., which is a lot on Main street in Racine, which he bid off at mortgage foreclosure. The dr. side shows his original investment, and taxes paid by him, and the cr. side shows what it sold for. It was sold by M'r's Taylor in 1866, after M'r Taylor's death.

127 Q. Was it not M'r Taylor's habit to keep a dr. and cr. account with all real estate which he owned?

A. I think it was, with the exception of his farm and his homestead.

Redirect ex'n:

Q. Refer to pages 46 and 47, account of T. W. Wright. Is that account carried to another page?

A. Yes, sir.

Q. What are the debits in this a/c made up of; that is, the general character of them?

A. Amount due on bond & mortgage, taxes paid on the property, money advanced, and the interest on the bond.

Q. What are the credits made up of?

A. Rents received from the mortgaged premises.

Q. On pages 188 and 189 does the dr. side of the account appear to be balanced by the credits of rents and money?

A. It does; about one-half in rents and the other half in money.

Q. Look at page 64. Give the entries of the dr. side of that account as entered.

A. 1863.

Jan'y 1st.	One undivided ½ of schooner D. S. with Daniel Slawson, valued at	$4,500 00
	To loss	458 50
	(Error in footing)	4,988 50

Q. Look at page 66. Give the entries of the dr. side.

128 A. 1863.

Jan. 1.	Schooner Norway, value this day	$4,500 00

On page 76 the entries on the dr. side are as follows:

1863.

Jan. 17.	To loss on pork, 1860	3,076 84	
	" " " " 1861	2,257 76	
			$5,334 60

On page 86 and 87 the entries on the dr. side are for repairs, taxes, and what he paid to M'r Wheeler for his proportion of the pier. The property was obtained on foreclosure. The cr. side shows rents received for it, and the am't he received for it. The dr. & cr. sides balance. The property appears to have been sold to M'r N. Pendleton, a former partner of M'r Taylor's, and a lumberman at Two Rivers. The am't of the sale to Pendleton is the last item on the cr. side of the account. On pages 96 and 97 the only entry on the dr. side is, "1863. Jan'y 19. Cash paid G. S. for real estate, $15,000.00," and the only item on the cr. side is, "Transferred to a/c of Steele and Taylor, $15,000.00."

JA'S H. KELLEY.

129 *Deposition of Thomas H. Davis.*

WEDNESDAY, *December 24th*, 1873.

Present, same parties before mentioned.

THOMAS H. DAVIS, being duly sworn as a witness on behalf of the complainant, deposes & says:

My age is 48; am carpenter and builder by occupation, and reside in Racine; have been engaged in the business since I was 9 years old, and contractor for 10 years past; have lived in Racine about 16 years; I know the parties to this suit; I know the property on Main street in Racine known as the Howland Block; I have examined that building for the purpose of making an estimate of its cost at the time of its construction; I made the ex'n last Monday—the day before yesterday—at the request of M'r R. M. Howland; in making the examination we commenced at the basement and examined the walls and took their dimensions, and also the floors and joists, and went through each story the

same way; took a small sketch of each floor, so that we could figure the plastering, flooring, &c.; took the number of doors and windows, and the sizes of them; measured the sash-partitions and internal work in general; I made the examination in connection with M'r Lucas Bradley; I made an estimate of the cost of the building after that examination, that is, of the cost at the time the building was constructed.

130 Q. What is the aggregate amount of the cost of the building at the time it was constructed, according to the estimate which you made?

(Objected to as incompetent, irrelevant, & immaterial.)

A. Some trifle over $21,000.

Q. Was that a fair estimate of its cost?

A. I considered it so.

Q. Are you familiar with the value of real estate in Racine, of the character of this property, in 1863?

A. Yes; I think I was.

Q. What, in your judgment, was the value of the Howland block, including the land, in the spring of 1863?

(Objected to for the reason that it is not sufficiently shown that the witness is competent to testify on that subject.)

A. Taking the building at $21,000, I think the lot ought certainly to be worth $5,000.

Q. Then, in your judgment, was the building & land, in the spring of 1863, fairly worth $26,000?

(Objected to as before.)

A. I think it was.

Cross-ex'n:

Q. How many stone did you include in your estimate?

A. I think it was seventy cords.

Q. What was the value of stone, per cord, at that time?

A. Seven dollars.

131 Q. Had you, on Monday last, a recollection of the price of stone in the spring of 1857?

A. Yes, sir.

Q. How did you learn the price of stone in 1857?

A. Because I was building in 1857.

Q. Did you purchase stone?

A. I did.

Q. What quantity?

A. About 16 cords.

Q. What did you pay per cord?

A. $7.00, to the best of my recollection.

Q. How many brick were used in the construction of that building?

A. 586,000, kiln count, or 652,000, mason's measurement.

Q. How did you ascertain the No. of brick?

A. By measuring the walls.

Q. What were brick worth in 1857 and 1858?

A. They were worth $7.00 per thousand; it depended somewhat on the location. Sometimes there was a half dollar's difference on ⅞ of the location; but here I should think they were worth $7.00.

Q. Did you know the price of brick in 1857 of your own knowledge?

A. I know that was what I paid for brick I purchased that year.

Q. How many brick did you purchase in 1857?

A. About 25 or 30,000, or so.

Q. How high are the walls of that building?

132 A. About 62 feet to the plate line; the front is higher.
Q. How did you measure it?
A. I measured the stories between.
Q. Did you actually measure it or estimate it?
A. We measured it between the ceilings and allowed for the joists?
Q. What was the value of common lumber in 1857 and 1858?
A. Common lumber was $15.00 to 22.00, according to lengths.
Q. At what price did you estimate the cost of the lumber used on this building?
A. Joist and scantling $15.00; timbers and long joists $22.00 per thousand feet.
Q. What length of joist did you estimate at $22.00 per thousand?
A. All the floor-joists, which are 20 feet long.
Q. Did you personally measure the width of the stor'es?
A. We took the outside measurement of the walls.
Q. What quantity of lumber at $22 per thousand?
A. 43,254 feet.
Q. Will you state the quantity of the different qualities of lumber?
A. 32,000 feet of ceiling-joists & scantling, at $15.00 per thousand, length 20 feet; 6,480 feet of flooring, at $17.00 per thousand; 32,400 feet of clear dressed flooring, matched, at $28.00 per thousand; 600 feet of dressed floor for partitions, @ $30.00 per thousand.
133 Q. Is that all the lumber you estimated on?
A. That is all the common lumber.
Q. Give me the quantity & price of the balance of the lumber.
A. That comes in another shape, in manufactured lumber, such as doors, sash, &c.
Q. How did you arrive at the value of that?
A. We called the opening of a door or window so much.
Q. How many doors did you find in the block?
A. We found nineteen. Eight of them were transom doors. Eleven of them plain doors.
Q. What did you estimate the cost of the transom doors, trimming and all?
A. Sixteen dollars each.
Q. What did you estimate the cost of the plain doors at?
A. Ten dollars each.
Q. In that estimate did you estimate the cost of trimming & casing the doors?
A. Yes, sir.
Q. Were there any other doors in the building beside those?
A. I wouldn't be certain that those in the Masonic Hall were included or not. I have an impression that they were not by my memorandum. It does not include the front or back store doors, nor the basement doors.
Q. Did you know the cost & quality of the roof of that building when it was first put on?
A. Not of my own knowledge.
Q. What value did you put upon the roof in your estimate?
134 A. We did not make a separate value of the roof. We counted the lumber in with the rest at so much per thousand.
Q. What was the cost of the other materials used in the roof besides the lumber?
A. I couldn't pick that out from this bill.
Q. What bill have you reference to?
A. My own memorandum.

Q. How did you arrive, then, at the cost of the roof?
A. By figuring in the lumber and iron and felting and tar.
Q. What did you figure the felting at?
A. I believe it was at $6.00 per square.
Q. What did you figure the value of the tar to be?
A. I included it and labor of putting on the tar in the above am't of $6.00 per square. I correct that. It should be $7.00 instead of $6.
Q. Did you have any experience of putting on roofs of that class in 1857 and 1858?
A. No, sir.
Q. Had you any knowledge of the cost of materials & the value of the labor in putting on that kind of roof in 1857 and 1858?
A. I know that was the going price.
Q. Who was doing the work?
A. M'r Bradley was.
Q. What was the quality of that roof when it was put on?
135 A. I don't know.
Q. Had you personal knowledge of the materials of which the roof was constructed?
A. No, sir.
Q. How did you estimate the value of the lath and plastering in the building?
A. We called the lath and plastering at I think it was 25 c. per square yard.
Q. How many yards did you estimate in the building?
A. (5,800) five thousand eight hundred.
Q. What is the cost of lath & plastering now?
A. From 27 to 30 c. per square yard.
Q. How many feet of lath were used in the building?
A. Forty thousand six hundred.
Q. Were you dealing in real estate in 1863?
A. I don't know whether I was or not.
Q. Did you ever own any business property on Main street in Racine?
A. No, sir.
Q. How did the value of property in the city of Racine, in the year 1863, compare with its value in the years 1856 and 1857?
A. I don't know. I only came there in 1856.
Q. When did you first become acquainted with the value of property in Racine?
A. I may say in 1856, when I came there.
Q. Was property in 1856, when you came to Racine, higher or lower than it was in 1863?
A. It was lower; good property.
136 Q. Was that true as to property on Main street?
A. That depends on which end of Main street it is. I think the business portion of Main street was higher in 1863.
Q. Between what cross streets does this property lie?
A. I believe it is between 4th and 5th streets.
Q. What sales of property between 5th and 2nd street, on Main street, in the year 1863, did you have knowledge of?
A. I don't know of any particular property.
Q. Did you know of any sales of property on that street between 2nd and 5th streets during the years 1862, 1863, 1864, and 1865?
A. I can't say that I can locate any particular year; was not dealing in real estate.

Q. Did you hear of any sales during either of those years?
A. I don't know whether Langlois bought in that time or not.
Q. Do you know what price Langlois paid?
A. I do not; don't remember.
Q. Do you recollect now of talking with any person owning property in either of those blocks on Main street, in either of those years, and ascertaining what they held their property to be worth?
A. I think I do.
Q. Do you know of your own knowledge what the Howland building cost?
137 A. No, sir.
Q. Did you take any part in the construction of the building?
A. No, sir.
Q. At the time of its construction had you commenced to take contracts?
A. Yes, sir. I commenced in 1857, but was out of it about three years after that.
Q. In estimating the cost of this building on Monday last, did you obtain any information from R. W. Howland as to the cost of any of the materials?
A. Yes; of the glass.

T. H. DAVIS.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of Richmond W. Howland, Horatio T. Taylor, William H. Jenks, D'r M. R. Teegarden, Lucas Bradley, James H. Kelly, and Thomas H. Davis were taken before me pursuant to notice duly given and by consent of the counsel of the parties; that I was attended by the said counsel at the times and place as stated in the captions of said depositions and by the said witnesses, who were of sound mind and lawful age, and that said witnesses were by me
138 first duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions there by me reduced to writing in the presence of said witnesses respectively & from their statements, and after carefully reading the same over to said witnesses respectively they subscribed the same in my presence.

I further certify that the exhibits hereto annexed, and marked by me respectively Compl't's Exhibits A, B, C, and D, referred to in said depositions of Richmond W. Howland, were offered in evidence before me.

I have retained said depositions & exhibits in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said deposition and caption named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery, U. S. Cir. C't, E. Dist. Wis.

139 *Compl't's Exhibit A.—Edw. Kurtz, Examiner in Ch'y.*

Power of attorney.—Eugene Howland, Richmond W. Howland.

Know all men by these presents that I, Eugene Howland, of the State of California, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Richmond W. Howland, of Racine, Wisconsin, my true and lawful attorney, for me, and in my name, place, and stead, to buy property for such price and prices as to him may seem meet, to borrow and loan money in any sum and sums upon such terms and conditions as to him may seem meet, and to secure the payment for such property bought and to be bought, and the payment of the money loaned and borrowed and to be loaned and borrowed, in such manner as to him may seem meet; to enter into and take possession of all and singular all those certain pieces or lots of land situated in the first ward, in the city of Racine, in the county of Racine and State of Wisconsin, and known and described as follows, to wit: Lots numbered three (3) and four (4) and twelve (12), in block number eighteen (18), according to the original plot of the village of Racine, made by Moses Vilas, surveyor, and recorded in the office of the register of deeds in and for the
140 county of Racine, in said State of Wisconsin, and to grant, bargain, and sell the same, or any part thereof, and to convey the same, or any part thereof, for such sum or price, and on such terms, as shall to him, my said attorney, seem meet; to mortgage and encumber, in any manner, to and in favor of any person or persons, the said lands and real estate, or any part thereof hereinabove described, for such sum and sums as to my said attorney shall seem meet; and for me, and in my name, place, and stead, to make, execute, and acknowledge and deliver good and sufficient deeds of conveyance for the said lands and real estate, or any part thereof herein described, either with or without covenants and warranty, and for any purpose, for me, and in my name, place, and stead, to make, execute, and acknowledge and deliver any mortgage and mortgages upon the lands and real estate hereinabove described, or any part thereof, for such sum or sums, and to secure the payment to any person such sum and sums, and upon such conditions, and containing such covenants and stipulations, as to my said attorney shall seem meet; and for me, in my name, place, and stead, to execute, make, and deliver any instrument in writing, with or without seal, for the payment of money to any person, as to my said attorney shall
141 seem meet; and to expend, invest, and dispose of any money thus borrowed and property thus bought in any manner as my said attorney may choose and direct, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and *and* about the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby certifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand seal this thirtieth day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

EUGENE HOWLAND. [SEAL.]

In presence of—
JNO. S. HARROW.
CHA'S W. GALAN.

STATE OF CALIFORNIA,
Twolumne County, ss:

On this 3rd day of September, A. D. 1857, personally appeared before me, a notary public for the aforesaid county and State, Eugene Howland, personally known to me to the person described in and who executed the foregoing power of attorney, who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

142 Witness my hand and seal this 3rd day of September, A. D. 1857.

[SEAL.] LEANDER QUINT,
Notary Public.

STATE OF CALIFORNIA,
Twolumne County, ss:

I, R. H. Robinson, clerk of the county court in and for the aforesaid county, the same being a court of record, do hereby certify that Le'nder Quint, the person before whom the foregoing acknowledgment was taken, was, at the date thereof, a notary public of said county and State and such officer as he therein represents himself to be; that I know his signature; and that the same subscribed to the above is genuine, and said instrument as power of attorney is executed & acknowledged according to the laws of the State of California.

Witness my hand and seal of the county court of said county this 3rd day Sept., 1857.

[SEAL.] R. A. ROBINSON, *Clerk*,
By G. C. WHITE, *Dept.*

Rec'd for record October 8th, A. D. 1857, 2½ o'clock p. m.

STATE OF WISCONSIN,
Racine County, ss:

I, W'm G. Hyde, register of deeds in and for Racine County, in the State aforesaid, do hereby certify that the above and foregoing copy of power of attorney is a true and perfect copy of the original of

143 record in my office, as recorded in volume 37 of deeds, on pages 313 & 314.

Given under my hand and official seal this 21st day of February, A. D. 1873, at the city of Racine, Wis.

[SEAL.] W'M G. HYDE,
Register of Deeds, Racine Co., Wis.

Compl't's Exhibit B.—Edw. Kurtz, Examiner.

This indenture, made this twenty-ninth day of January, A. D. 1859, by and between Eugene Howland, of the city and county of Racine, in the State of Wisconsin, party of the first part, and Isaac Taylor, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of his indebtedness to the said party of the second part and the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and , has granted, bargained, sold, assigned, and set over unto the said party of the second and his assigns, by and these presents does grant, bargain, sell, assign, and set over unto the said party of the second part and his assigns, a certain indenture of lease, dated the nineteenth day of August, A. D. 1858, made and

144 executed by Eugene Howland, party of the first part thereto, and A. I. Redburn, Samuel Brooks, and Lewis M. Evans, trustees of

Racine Lodge No. 18 of Ancient Free and Accepted Masons, of said city, county, and State, parties of the second part thereto, which lease is recorded in the office of register of deeds in and for the county of Racine, in said State, in volume 38 of deeds, on pages 460, 461, & 462, and all the rents, issues, reserved in said lease to Howland, to hold the said indenture of lease, and the rents and issues reserved therein and thereby unto the said Isaac Taylor and his assigns forever, with full power and authority to the said Isaac Taylor and his assigns to receive and collect all and singular the rents and moneys reserved and secured to be paid in and by the said lease, and the said party of the first part hereto does hereby authorize and empower the said party of the second part hereto and his assigns to ask for, demand, and receive, sue for and collect, the rents and moneys reserved and secured in and by the said lease. But this indenture and assignment is made upon the express condition that if the said Eugene Howland, his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said Isaac Taylor, his heirs, executors, or assigns, the amount of the interest as the same shall become due and payable on a certain mortgage made to the said Isaac Taylor, and recorded in the office of register of deeds
145 in and for the county of Racine, in said State of Wisconsin, in volume Y of mortgages, on pages 141, 142, and 143, and executed by said Eugene Howland, and also all sums hereafter advanced or paid out to or for the said Eugene Howland by the said Isaac Taylor, together with interest on said interest and the said advancement from the time the same shall become due or shall be made, at the rate of twelve per cent. per annum until paid, and the reasonable cost and expenses of the said Taylor in collecting said rents, then the above assignment shall be void, but to remain in full force and effect until such interest and advancement shall be paid by said Eugene Howland to the said Taylor or his assigns, and until the principal sum and interest secured to be paid by said mortgage and such advances and interest thereon shall be fully made and paid, then this assignment to be void, otherwise to be and remain in full force and effect.

Witness my hand and seal the day and year first above written.

EUGENE HOWLAND. [SEAL.]

In presence of—
HENRY T. FULLER.
MARSHALL M. STRONG.

STATE OF WISCONSIN,
Racine County, ss:

On this third day of February, A. D. 1859, before me, the undersigned, personally appeared Eugene Howland, to me known to be the per-
146 son described in and who executed the above instrument in writing, and acknowledged that he had executed the same for the uses and purposes therein stated.

[SEAL.] HENRY T. FULLER,
Notary Public.

Rec'd for record Feb'y 28, A. D. 1859, at 12 o'cl'k m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of assignment of lease is a true and perfect copy of the original, of record in my office, as recorded in volume 38 of deeds, on page 500.

That I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this nineteenth day of November, A. D. 1873, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Compl't's Exhibit C.—Edw. Kurtz, Examiner.

Whereas I, Eugene Howland, of the city and county of Racine, in the State of Wisconsin, did, on the fourth day of May, 1858, execute
147 and deliver to Phineas Hardy, of the county of Jefferson, in the State of New York, two promissory notes of $500 each, one payable one year after the date thereof, and the other two years after the date thereof, with interest annually, and a mortgage to secure the same, bearing date on that day, and which is recorded in the office of register of deeds of said Racine County, in volume Y, on page 555, which mortgage is a lien upon lot number twelve (12), in block number eighteen (18), as the same is described on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of said register of deeds, and situate in said city of Racine; and whereas I had previously executed a mortgage on the same premises to secure the payment of seven thousand dollars; and whereas I am unable to pay the interest upon said mortgage, and the said Phineas Hardy considers the premises a scanty security for his said mortgage: Now, therefore, in consideration of the premises, I hereby deliver over possession of said mortgaged premises to the said Phineas Hardy, giving him all the rights and powers of a mortgagee in possession; and I hereby expressly authorize and empower him, or any agent to be appointed by him, to collect all rents now due, or hereafter to grow due, from any portion of said premises; also to lease any portion of the same not now leased, and to release any portion thereof which may hereafter become vacant,
148 and to make all necessary repairs, and to keep the buildings on said premises insured for such amount as he shall deem expedient, and to pay the interest on said mortgage due to said Isaac Taylor, and to retain the balance of moneys received from rents of said premises towards the payment of his said mortgage, and when his said mortgage shall be fully paid, then to redeliver possession of said premises.

In testimony whereof I have hereunto set my hand and seal this ninth day of May, 1859.

EUGENE HOWLAND. [SEAL.]

In presence of—
IRA C. PAINE.
DANIEL A. PIERCE.

STATE OF WISCONSIN,
Racine County, ss:

On this the ninth day of May, A. D. 1859, personally appeared before me, a notary public for the State of Wisconsin, residing in the city and county of Racine, the above-named Eugene Howland, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the same for the uses and purposes therein mentioned.

IRA C. PAINE.

Received for record May 10th, A. D. 1859, at 2¼ o'cl'k p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of assignment is a true and perfect copy of the original of record in my
149 office, as recorded in volume Y of mortgages, on page 594. That I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this 19th day of November, A. D. 1873, at the city of Racine, county and State aforesaid.

[SEAL.] W'M G. HYDE,
Register of Deeds, Racine County.

Compl't's Exhibit D.—Edw. Kurtz, Examiner.

LUCIUS S. BLAKE, JAMES T. ELLIOTT,
to
ISAAC TAYLOR.

This indenture, made this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-three, between Lucius S. Blake and James T. Elliott, of the city and county of Racine, in the State of Wisconsin, party of the first part, and Isaac Taylor, of the same place, party of second part, witnesseth:

That the said party of the for and in consideration of the sum of seven thousand five hundred dollars, to them in hand paid, the receipt whereof is hereby acknowledge', have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and
150 convey unto the said party of the second part, his heirs and assigns, forever, all those certain pieces or parcels of land situated in the first ward of the city of Racine, county of Racine, State of Wisconsin, known and described as follows, to wit: Lot number twelve (12), in block eighteen (18), as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine; also, the north ten (10) feet of lot number four (4), in said block number eighteen (18), being a strip of land ten (10) feet wide off the northerly side of said lot four (4) and extending the whole length of said lot four (4) east and west; also, all the benefits, rights, and privileges contained in a certain agreement executed by one Charles Clement to said Isaac Taylor, and recorded in volume 43 of deeds, on page 56, in the office of said register of deeds, hereby expressly reserving and excepting from the above-described premises all the rights, privileges, and easements conveyed by said Isaac Taylor and wife to said Charles Clement by deed recorded in the office of said register of deeds, in volume 43 of deeds, on pages 54 & 55, this mortgage being given to secure the payment of part of the purchase-money of said premises; to have and to hold the above-bargained premises, with the appur-
151 tenances, to the said party of the second part, his heirs and assigns, to his and their sole use forever; provided allways, and these presents upon this express condition, that if the said Lucius S. Blake and James T. Elliott, their heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the said party of the second part, his heirs, executors, or assigns, the sum of seven thousand five hundred dollars, in ten equal payments of seven hundred and fifty

each, semi-annually from date hereof, with interest on each and every one of said payments, except the payment becoming due and payable thirty months from date hereof, which payment so excepted shall draw no interest, the interest on each of said payments, except the first, payable annually, according to the terms of ten certain promissory notes bearing even date herewith, executed by said Lucius S. Blake and James T. Elliott to the said party of the second part, and shall also pay all taxes and assessments which shall be on said premises previous to the payment of the whole of said money and interest as soon as the same shall be assessed thereon, and shall pay all reasonable expenses which the said party of the second part may incur in collecting said notes or foreclosing this mortgage, for the services of attorney or counsel, or
152 otherwise, then these presents and the said notes shall cease and be null and void; and the said Lucius S. Blake and James T. Elliott do further covenant and agree with the said party of the second part to pay the said sum of money, with interest, the said taxes and assessments, and the said expenses, at the times and in the manner above stated.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

LUCIUS S. BLAKE. [SEAL.]
JAMES T. ELLIOTT. [SEAL.]

Signed, sealed, and delivered in presence of—
W. J. DUNHAM.
J. F. STEVENS.

STATE OF WISCONSIN,
County of Racine, ss:

On this eighteenth day of April came personally before me, the subscriber, a notary public in and for said county, Lucius S. Blake and James T. Elliott, to me well known to be the persons described in and who executed the within conveyance, and acknowledged that they had executed the same for the uses and purposes therein set forth.

[SEAL.] WARREN J. DUNHAM,
Notary Public.

Received for record April 20th, 1863, at 12 o'clock m.

I hereby certify that this mortgage is fully paid, satisfied, and discharged.

I. TAYLOR, [SEAL.]

Acknowledged before me this 29th day of Nove., A. D. 1864.
SAM'L G. KNIGHT,
Deputy Register of Deeds.

STATE OF WISCONSIN,
153 *Racine County, ss:*

I, William G. Hyde, register of deeds in and for Racine County, in the State aforesaid, do hereby certify that the within and foregoing copy of mortgage is a true and perfect copy of the original of record in my office, as recorded in volume 29 of mortgages, on pages 186 & 187. That I have compared the same with said original, and hereby certify that the within & foregoing copy is a full, complete, and perfect copy of said original of the whole thereof.

Given under my hand and official seal this 19th day of February, A. D. 1873.

[SEAL.] W'M G. HYDE,
Register of Deeds of Racine County, Wisconsin.

154 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of witnesses taken on behalf of the complainant in the above-entitled cause, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

THURSDAY, *April 23rd*, 1874.

Present, D. G. Hooker, counsel for complainant.
" John T. Fish & C. E. Dyer, counsel for defendants.

Deposition of A. R. Burdick.

ALVIN R. BURDICK, being duly sworn as a witness on behalf of complainant, deposes & says:

I reside in Racine; have resided there since the fall of 1855; am 53 years of age, & by occupation am a machinist. I am not acquainted with Eugene Howland, the complainant. I know the defendants, Blake & Elliott. I know Charles Shaw, of Racine. He married my wife's sister. I know the property known as the Howland block in Racine.

155 I heard of the transfer of the title of that property from Isaac Taylor to Mess'rs Blake & Elliott at about the time the transfer was made. Soon after I had heard of the transfer I met M'r Blake on the street in Racine.

Q. State whether you had a conversation at that time with him in reference to this property.

A. Yes, sir; I did.

Q State what that conversation was.

(Objected to as incompetent & immaterial.)

A. I said to M'r Blake, I understand you have bought the Howland block. He says, yes, I have or have not. I have the papers for it & Howland has the right to redeem it, or the chance, or something to that effect, and he (Blake) says he probably never will do it, or something of that kind.

Q. Is that the substance of the conversation as you recollect it?

A. Yes, sir; as near as I can recollect it.

Cross-examination:

Q. Where was this conversation had?

A. It was right in front of the Howland block, I think.

Q. Who was present?

A. M'r Blake.

156 Ques. Anybody else?

Ans. Myself.

Ques. Anybody else?

Ans. Not that I recollect; I think not.

Ques. Did you have any communication on any other subject at that time?

Ans. Yes, sir.

Ques. When was the conversation had?

Ans. I can't recollect the date; it was shortly after the time of the transfer of the property.

Ques. What year was it?

Ans. I could not tell you, sir; never paid any attention to dates at all.

Ques. Can you tell the year, month, or day of the month when you had the conversation?

Ans. No, sir.

Ques. Did you know Richmond W. Howland at that time?

Ans. I don't know that I knew his first name, but I knew the M'r Howland who is here present as a witness, & had known him for years; I didn't know any others of the Howland family except his wife & children.

Ques. Was anything said in that conversation about Richmond W. Howland?

Ans. There was.

157 Ques. Was he the Howland referred to in that conversation?

Ans. This is the man now present referred to.

(It is admitted that the person present is Richmond W. Howland.)

Redirect examination:

Ques. In this conversation with M'r Blake, did M'r Blake name any particular Howland, or state the given name of the man he referred to?

Ans. I think not.

Recross examination:

Ques. What did M'r Blake say about Howland, and what did you say? State the conversation so far as it related to Howland.

Ans. He spoke about Howland as a business man. He said Howland was a good fanning-mill peddler and a good collector, but said it didn't seem as if he could do business on his own hook, and he needed a boss. I didn't make any particular reply to that, except that I had always heard he was a good, thorough business man. I think that was the extent of our conversation.

Ques. Was this said before or after the statement in relation to the Howland block?

Ans. After.

158 Ques. Have you stated all the conversation?

Ans. I think that is all.

Ques. What time of day did this conversation occur?

Ans. I don't know whether I can tell you whether it was in the forenoon or afternoon; it was in the day-time.

Ques. Now, repeat the entire conversation, consecutively, as it occurred, from beginning to end, in the language, as nearly as you can, of M'r Blake & yourself.

Ans. I asked him about the sale of the property, & said to him, "I understand you have bought the Howland block." He said he had, or he had not; he had the papers for it, but Howland had the chance to redeem it. He thought he would not. He said Howland was a good fanning-mill ped'ler; a good agent for making collections, or something of that sort, but he couldn't or didn't seem to be able to run the business alone; he wanted a boss. I think that was all. I don't think I made any reply, except that I always took him to be a good man.

Ques. In what business were you engaged at that time?

Ans. I don't think I was in any particular business, except the patent-right business. I was working on machinery from time to time. If I knew the dates, I could tell what particular work I was on at that time.

Redirect examination:

Ques. In answer to one of M'r Dyer's questions, you said you

159 had another conversation with M'r Blake at that time. Does the statement which you have now given, purporting to give the whole conversation, embrace what you meant by the other conversation?

Ans. Yes, sir.

Ques. On which side of Main st., in front of the Howland block, did this conversation take place?

Ans. On the east side.

A. R. BURDICK.

Deposition of Albert P. Dickey.

ALBERT P. DICKEY, being duly sworn as a witness in behalf of complainant, deposes & says:

I am 56 years of age. I reside in Racine; have resided there since the year 1846, and am in the foundry & machine business, & agricultural implement manufacturer. I can't say that I know Eugene Howland, the complainant. I know Blake & Elliott, the defendants; have known M'r Blake ever since I lived in Racine, and M'r Elliott ever since he lived in Racine. I know the property known as the Howland block, in Racine. I recollect the fact of the title of that property being transferred from Isaac Taylor to Blake & Elliott.

Ques. Soon after you heard of that transfer, did you have a conversation with M'r Blake in reference to the manner in which they took or held the title?

Ans. I did.

Ques. Where did that conversation occur?

Ans. It was near my house or M'r Blake's shop, close by my

160 house.

Ques. State what the conversation was.

(Objected to as incompetent & immaterial.)

Ans. The conversation commenced in regard to brick. M'r Blake said he was lending or selling to Osborn & Osgood some brick, that they might complete their building. This conversation was in the spring of the year. I think it was some time in the first of May, and I says to M'r Blake: I understood you have been helping M'r Howland to pay for the building, & have taken M'r Taylor's interest in it; and M'r Blake said that M'r Howland's wife had been dinging or teasing him to advance money to M'r Taylor, to take it in the name of Blake & Elliott, and to become responsible to pay M'r Taylor what there was going to him, and M'r Blake said he had done it; and at the expiration of ten years, if the rents paid the taxes, and the interest and principal of the money, then it was to be deeded back to the Howlands. The word Howlands was used by Blake. M'r Blake said that Howland was a hard-working man, referring to R. W. Howland, and industrious; and, on account of his wife, he wished to help him to save the property, or something in it. I told M'r Blake it was very kind in him, and Howland was a good fellow, & needed some one to assist him. I don't recollect of any further

161 conversation in regard to that at this time, but there was some more in regard to the Osborne & Osgood brick.

Ques. Is that the substance of the conversation on that subject?

Ans. It is, as near as I can recollect.

Ques. Soon after you heard of that transfer did you have a conversation with the defendant Elliott, in relation to the manner in which they took or held the property?

Ans. I did.

Ques. Where did that conversation take place?

Ans. It was in front of the Howland block, near where you go up stairs into the building.

Ques. State what that conversation was.

(Objected to as incompetent & immaterial.)

Ans. I think M'r Elliott was doing some repairs on the building, or seeing to them, at the time of the conversation, and I said to him: I understand you have an interest in this institution. M'r Elliott's reply was, that they had paid M'r Taylor his claim on the building, & purposed to help Howland try to redeem it. That is as far as I recollect the conversation. I did not have but a few words with him.

Cross-examination:

Ques. How many years have you manufactured fanning-mills at Racine?

Ans. Since 1846.

Ques. During how much of that time have Blake & Elliott manufactured fanning-mills?

162 Ans. I should think it had been five or six years; it might have been eight years. M'r Blake has been manufacturing fanning-mills there ever since I came to Racine.

Ques. During the period of your acquaintance with M'r Elliott has there been any interruption of your social relations with him?

Ans. Yes, there has.

Ques. For how many years did that interruption continue?

Ans. I don't think it continued long; not more than six months or a year. I get mad and get over it again. When I got a settlement with them I got over it.

Ques. In what year did you have the conversation referred to with M'r Blake?

Ans. I didn't set it down, M'r Dyer, but the best I can recollect, it must have been in 1863. I think it was the spring that Osborn & Osgood put up their block.

Ques. Do you mean their brick block on Sixth st., fronting Market square?

Ans. Yes, sir.

Ques. What time in the year did you have the conversation with M'r Blake?

Ans. About the 1st of May; it was before any one had burned any brick.

Ques. Does any other circumstance than the building of Osborn & Osgood's block cause you to remember the year?

163 Ans. That is the circumstance; I don't recollect of any other.

Ques. To what extent had the construction of Osborn & Osgood's block progressed at that time?

Ans. He had only got part of one store up. He had not brick to go on with it.

Ques. Repeat all that part of the conversation you had with M'r Blake in relation to brick.

Ans. I asked M'r Blake how M'r Howland—I referred to R. W. Howland, but didn't give his name—got along in making brick, and said, I understand you are going to furnish Osborn & Osgood some brick, to complete their building. M'r Blake says, in reply, that M'r Howland had worked very hard the year previous in the brick business, and thought he hadn't or would not make much out of it; that he was going to furnish Osborn & Osgood some brick, to finish their block, from the

brick that Howland had made. That is pretty much all the conversation about the brick.

Ques. Was any one else present at the conversation referred to than yourself & M'r Blake?

Ans. There was not.

Ques. Do you know whether R. W. Howland worked upon the Howland block during its construction?

Ans. I do; he did; he was the managing man in putting it up.

Ques. Did he have a brother, Jeptha Howland, who was at Racine during any of that time?

164 Ans. He had a younger brother, but I didn't know his given name. He worked on the building, I think, all the time it was being constructed.

Ques. Do you know whether he worked in the brick-yard, too?

Ans. I never was at the brick-yard in my life, & never saw him there, but I saw him with brick-yard clothes on, and he said he worked there.

Ques. When did you last see him at Racine?

Ans. When he was at work in the brick-yard.

Ques. What Howland did you understand M'r Blake to refer to?

Ans. R. W. Howland.

Ques. What Howland did you understand M'r Elliott to refer to in his conversation?

Ans. R. W. Howland.

Ques. Which conversation did you have first, that with M'r Blake or that with M'r Elliott?

Ans. The conversation with M'r Blake was first, I think.

Ques. How long after that did you have the conversation with M'r Elliott?

Ans. Somewhere from two to four weeks. I couldn't state the time exactly.

Ques. In the conversation with M'r Blake, did he say that he was going to furnish money to enable Howland to make or burn brick?

Ans. I think he said something; that he had furnished money; I can't recollect it exactly; that he had helped Howland, or advanced him money.

165 Ques. Was R. W. Howland making brick at that time?

Ans. He was; he was running the brick-yard, but it was too early in the season then to burn brick. He made brick the season before and the year following this conversation.

Redirect examination:

Ques. In answer to questions of M'r Dyer, you understood Blak & Elliott, in their conversations that you have given, to refer to R. W. Howland; did either of them in those conversations refer to Howland or mention Howland by any given name?

Ans. I don't think they said anything about Howland's given name. I didn't know any other Howland than R. W. and the younger brother that worked in the brick-yard.

ALBERT P. DICKEY.

Deposition of A. P. Dutton.

ACHAS P. DUTTON, being duly sworn as a witness on behalf of the complainant, deposes & says:

I am 51 years of age. I reside in Racine; have resided there since the year 1841. Occupation now is farming a little, have a vessel to look

after, and sometimes buy some grain; have no steady business. I have seen Eugene Howland, the complainant, several times. I know the defendants, Blake & Elliott; have known M'r Blake since
166 the year 1841, and M'r Elliott, I should think, for 20 years or more. I know the property in Racine known as the Howland block. I knew of the transfer of the title to that property from Isaac Taylor to Blak & Elliott at the time.

Ques. Soon after you had heard of that transfer, did you have a conversation with the defendant Blake in reference to the manner in which they took or held the property?

Ans. I had a conversation with M'r Blake in reference to the sale of the property by M'r Taylor to Blake & Elliott.

Ques. Where did it take place?

Ans. At the post-office, in this same block.

Ques. State what the conversation was.

(Objected to as incompetent & immaterial.)

Ans. I was finding fault with M'r Taylor, in my conversation with Blake, for selling the property. M'r Taylor had told me what he was doing & what he was going to do with the property. I understood M'r Blake to say that M'r Howland was to have the benefit of the property the same as if M'r Taylor had held it. He spoke of his friendly feelings towards Howland, and thought he was as safe a man to hold it as Isaac Taylor was. The exact words I cannot recollect at this time, as 'tis so long ago.

167 Ques. Did he say anything about taking the property off of Taylor's hands?

(Objected to as before.)

Ans. I understood M'r Blake to say he had paid M'r Taylor's claims all up, or had assumed it, or something to that effect, and that when he got the money from the rents of the property or otherwise, he would give it up to Howland; that was my understanding of the conversation we had, and that he did it to help Howland. M'r Blake asked me if I didn't think the property was as safe in his hands as in Isaac Taylor's. I think I can tell pretty well what my reply was. I had been charging M'r Taylor with bad faith, and I expressed myself as pleased that it had got into M'r Blake's hands.

Ques. Did Blake appear to understand that you knew how Isaac Taylor had been holding the property?

(Objected to same as before.)

Ans. I had repeated to M'r Blake how I understood M'r Taylor was holding it.

Ques. How did you tell him that you understood M'r Taylor had been holding the property?

(Objected to same as before.)

Ans. I can't give the words exactly. I understood M'r Taylor to say time & time again that he was holding that property for M'r Howland. He claimed credit for getting the building well rented, getting the post-office there and the city council, and got the building nearly all
168 rented at a good rent, claiming that it was a great bother to him, & that he got nothing from it but his interest, and that it was only a favor to M'r Howland to save him from losing his property. How much of this I said to M'r Blake I can't now tell; but I accused M'r Taylor of bad faith in selling the property until M'r Blake told me how it was.

Cross-examination:

Ques. What Howland were you speaking of when you were talking with M'r Blake?

Ans. I couldn't say whether he said Howland or the Howlands.

Ques. What Howland were you talking about in your conversation with M'r Blake?

Ans. This man, R. W. Howland, is the man I had in view all the time during the conversation.

Ques. What one did you understand that he meant when he spoke of being friendly to Howland?

Ans. I understood him to mean this R. W. Howland.

Ques. At what time did you have the conversation with M'r Taylor?

Ans. I had it several times before he sold the place, and afterwards, too.

Ques. How long was it before you talked with Blake that you had the conversation with Taylor at which he told you about getting the building rented?

Ans. It would be difficult to state within a year. It was about the time of his building an elevator in Chicago.

169 Ques. Which Howland did you understand M'r Taylor to say he was trying to help?

Ans. I understood it was R. W. Howland.

Q. When was it you had the conversation with Blake?

Ans. I think it was in 1862 or 1863; it might have been in 1861 or 1864; it was soon after the report got on the street that the property had changed hands—from Taylor to Blake & Elliott. In all the conversations with Blake & Taylor, I understood R. W. Howland to be the man we were talking about; but the given name was not mentioned. He was simply spoken of as Howland. Don't know that I ever had any talk with R. W. Howland or his brother about building the property.

Ques. Who has been getting the witnesses in this case, & subpœnaing them & getting them to come here?

Ans. I can only speak for myself. M'r R. W. Howland asked me if I would come without being subpœnaed, and I told him I would.

Redirect examination:

I understood you to say, but it doesn't appear to be entered by the com'r, that you recollect one reason that M'r Blake gave for getting the property out of Taylor's hands.

Ans. I referred to the reason M'r Taylor gave for wanting some one to take his place.

ACHAS P. DUTTON.

170 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of John W. English, taken on the part of the complainant in the above-entitled cause pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

MONDAY, *May 4th*, 1874.

Present, D. G. Hooker, counsel for complainant.
" John T. Fish, " " defendants.

Deposition of John W. English.

And the said JOHN W. ENGLISH, being duly sworn as a witness on behalf of complainant, deposes & says:

I reside in Carroll Co., Iowa; am fifty years of age the 7th of January last; by occupation, am a farmer. I know Eugene Howland, the complainant. I know the defendants, Mess'rs Blake & Elliott. I resided in Racine at one time, and moved there the 1st of January, 1848, and took my family there that spring. I moved my family away from there, my impression is, the 28th or 30th of April, 1862. I was in Racine about the fore part of the fall of that year, and again about
171 the first of December. I know the property on Main st., in Racine, known as the Howland block. In the fore part of December, 1862, I had a negotiation or interview with M'r Blake in regard to the Howland block.

Ques. How did that interview or negotiation come to take place? Give the circumstances which led to it.

(Objected to as incompetent & immaterial.)

Ans. Some time previous to that, it might have been a couple of months, I was passing through Racine, on my way to Chicago. (I was then residing in Ripon, Wisconsin, and stopped at Racine frequently on my way in going to and from Chicago.) I stopped at Racine, & there saw M'r Richmond W. Howland, and he asked me if I would go in with M'r Blake, and advance a certain amount—I think it was in the neighborhood of $9,000; I think it was between $9,000 & $10,000; my share of it to be one-half, and take a deed of that property from M'r Taylor, who was carrying it for them at that time. He stated if I would do that, we could collect rents, get our interest, and apply the balance on the debt, and he would get a bond from his brother to redeem the property in, I think, six years, or it may have been seven years, but I think it was six. We were to take a deed of the property, & keep an account of all the receipts & expenditures, & when the time came for redemption of the property we were
172 to be paid our interest, expenses, repairs, and trouble for taking care of the property; that is his proposition as I understood it. I told him I could not do anything of the kind at that time, as my money was all tied up in Chicago; but when I closed my business in Chicago I would come back & see him. About the first of December, 1862, I closed my business in Chicago, and came up to Racine & went to see M'r Howland, & told him I was ready to enter into the arrangement if I found everything right. He talked matters over then, & told me to go and see M'r Blake and have a talk with him. Instead of going to M'r Blake, I first went to M'r Isaac Taylor to enquire of him how the title stood & how the matters were. He told me, I think, that he had a sheriff's deed of it; he said he had had the property sold at public sale to perfect the title to it, on account of some liens or judgments, I don't know which. He said he had been carrying it since spring, I think, for the boys, & he wanted to get it off his hand, and any arrangement I made with M'r Howland, either to take part of it or the whole, would be satisfactory to him. Our interview then ceased, & I then went to M'r Blake's place of business, and had an interview with him.

173 (Def'ts' counsel moves to strike out all of this answer as incompetent & irrelevant, & as hearsay.)

Ques. For what purpose did you go to M'r Blake's place of business? (Objected to as incompetent & immaterial.)

Ans. To see him in regard to making the negotiation. I had no other object in going to him.

Ques. What took place at that interview between you & M'r Blake? (Same objection as last above.)

Ans. After a salutation, I asked if M'r Howland had spoken to him about my entering into the arrangement for the purchase of the property and carrying it for them for a certain number of years—either six or seven. He told me that he had. He asked me how I wished to arrange the matter. I told him I had not thought much about it or the details of the arrangement, but M'r Howland & I had talked about an arrangement for taking the property from M'r Taylor and carrying it for a certain number of years. I asked M'r Blake what was the nature of the paper we were to give M'r Howland—whether a bond for a deed, or articles of agreement. He said that neither was necessary; that his word was good with Howland, & they understood each other about the matter thoroughly. I told M'r Blake I would have nothing to do with it unless M'r Howland's rights were all down, stated on paper, so that I would know when his
174 rights expired, and save future trouble. I think those were the words. I further stated that if I did anything about it I would place the matter in Marshall M. Strong's hands, to see that everything was all right. M'r Strong was a lawyer in Racine at that time. M'r Blake said that he had a proposition to make to me that he thought would suit me better, as I was not going to reside there; that he would take a deed of the property & give me a mortgage for what money I furnished, and then I would be perfectly safe, and he would be there where he could attend to it, and I could draw my interest. I refused to do that, and told him my object in going in was to try and make more than simple interest out of it. And then I talked with him about the probability of the Howland boys not being able to come to time when the time for redemption arrived, & about the value of the property, &c. I declined to enter into the arrangement, & told him I would not enter into the arrangement unless I had the same title that he had, and he declined entering into the arrangement as I wanted it, & I then left.

Ques. In this conversation with Blake, did he represent himself as the friend and acting in the interest of Howland?

(Objected to as incompetent, irrelevant, & leading.)

Ans. Yes, sir; that was the reason he gave for not wishing the
175 title partly in me, and for wishing to take the whole title in his own name. He expressed himself as if I might sell off my interest to some one else to speculate or for some other reason.

Ques. In this interview with Blake did you apprise him of the fact that you had been to see Isaac Taylor on the subject?

Ans. I did not.

Ques. Was anything said in that interview with Blake as to what the value of the property was?

Ans. Nothing definite; we talked about its being worth from $17,000 to $20,000 in time paper.

Cross-ex'n:

Ques. What is the reason you did not take the half-interest in the property from Taylor?

Ans. That idea had never been entertained or mentioned at all. I simply went to see him with reference to taking the title to the whole of it with Blake, and to see how it stood.

Ques. Did Taylor offer to let you have the whole or any part of it?

Ans. No, sir; he said that any arrangement I would make with Howland would be all right. I never talked of buying a part of it, except in connection with M'r Blake. I told M'r Taylor that M'r Howland had requested me to take the whole of it, but the distance I lived from Racine was such that I could not attend to it. Then he stated that
176 any arrangement I made with M'r Howland to take the half or the whole with M'r Blake would be satisfactory.

Ques. Where was your conversation with M'r Taylor?

Ans. At his house—on reflection, I think it was near his residence; between that & McClurg's.

Ques. Where did Taylor live at that time?

Ans. I could not say where he lived. I knew where his residence was, but whether he lived in it at that time I didn't know, but supposed he did, and started for it.

Ques. How far was his residence from McClurg's?

Ans. That I couldn't say exactly. I think it was in the same block, but am not certain. That is my impression; have been away a number of years from Racine.

Ques. What kind of a house did Taylor live in?

Ans. His residence that he built, known as the Taylor residence, was a cream-colored brick, according to my impression.

Ques. What was the nearest residence to it?

Ans. I couldn't say; there is a kind of glimmer in my head that H. S. Durand's house was near it, but couldn't say positively about it.

Ques. Who was present at the conversation with M'r Taylor?

Ans. Not any one.

Ques. Who was present during your interview with M'r Blake?

Ans. Not any one.

177 Ques. How many letters have you received from Richmond W. Howland since the first day of July last?

Ans. I could not answer positively that. I have received several.

Ques. How many of them have you with you?

Ans. I am not certain that I have any, but think I have one, the last one.

Ques. Will you let me see it?

Ans. I will show it to the counsel, & if proper show it to you.

Ques. Have you received any letters from any other person than Richmond W. Howland in regard to this suit?

Ans. I have not.

Ques. As near as you are able to state, give the number of letters that you rec'd from Howland.

Ans. I couldn't state within two or three. There may be half a dozen; may be 7 or 8.

Ques. When did you arrive in this State?

Ans. Saturday afternoon last.

Ques. Will you let me see the last letter you rec'd from Richmond W. Howland?

(Counsel for compl't advises the witness to furnish the letter, if it is desired, for the purpose of offering it in evidence, and if the counsel for the defendants will offer it in evidence, but if it is asked for as a matter of curiosity he advises the witness to decline exhibiting it.

Counsel for defendants states that it was their only object in ask-

178 ing for the letter *was* to put it in evidence, if it contains anything material to the examination of the witness, or has any bearing upon the merits of the case.

Witness produces the letter, and exhibits it to the defendants' counsel.)

Ques. Have you any other letters in your possession from Richmond W. Howland?

Ans. No, sir; not here. I have severalat home in my bureau, I think. I would not be positive.

(Def'ts' counsel offers said letter in evidence, and same is hereto attached marked "Def'ts' Exhibit No. 12.")

Ques. You have been at M'r Howland's house since you have been in Racine?

Ans. Yes, sir.

Ques. M'r Blake declined to go into the arrangement unless you would take the title without any writing back to Eugene Howland, did he not?

Ans. Yes; he stated that Richmond W. Howland and he understo'd the thing and his word was good with him.

Ques. You declined to go into the arrangement unless the interest of the Howland boys should be specified in writing; is that the case?

Ans. For that reason, & for the reason that I wanted the same title M'r Blake had, I would not furnish the money & take the mortgage.

Ques. Was not the only difference between your proposition to
179 M'r Blake, and his reply in acceptance of it, that he did not want it in writing as to the interest of Howland, and you did?

Ans. I should say it was, with the exception of the objection he made that I might sell my interest to other parties. For that reason he said he would rather give me a mortgage on that & other property, if I wished it, and take the deed in his own name.

Ques. Where was Blake at the time you had that conversation?

Ans. He was at his fanning-mill shop, I think, on the school section, above 6th st. I could not tell at what part of the shop.

Ques. What was he doing when you first saw him?

Ans. I entered the shop, & I think he was standing, not doing anything, and I called him aside & spoke to him.

Ques. What did you call him aside for?

Ans. I could not tell whether I called him aside, or whether I went up to him and saluted and spoke to him. I made use of the words "called him aside" before I thought about it. I cannot say here, positively, whether he was in the office or in the shop. I would not like to say positively.

Ques. What kind of a building was it he was in?

Ans. It's my impresion it was a wooden building, but still it may have been stone. It is a long time since then.

Ques. Can you tell anything about how large a room it was?

Ans. I could not; I have not the slightest idea.

180 Ques. What had been your business while you lived in Racine?

Ans. With the exception of the last year, my business was the saddle, harness, & trunk manufacture. The best part of the last year I was engaged in manufacturing for the government, knap'acks, cavalry-saddles, & haversacks.

Ques. When did you get the first contract to manufacture for the government?

Ans. I could not tell the date exactly. The first contracts I had were

for the 2nd, 3rd, 4th, 5th, and 6th Wisconsin Infantry, in the spring and fore part of the summer of 1861.

Ques. How long did you remain in the business of manufacturing for the government?

Ans. I quit about the first of December, 1862.

Ques. State the day, as nearly as you are able, that you had the interview with M'r Blake.

Ans. It is utterly impossible; as near as I can give it it was during the first week of December, 1862. I know I was at home about two weeks before Christmas.

Ques. Where were you living at that time?

Ans. At Ripon, Fond du Lac County, Wisconsin.

Ques. What business were you engaged in there at that time?

Ans. Spending what money I had made in Chicago. I kept a little harness-shop, but didn't do much.

Ques. Were you ever engaged in loaning money?

Ans. Yes, sir, a little; not much. Have been engaged a good deal in borrowing, and trying to borrow.

181 Ques. When were you engaged in loaning money?

Ans. In 1862 and 1863 I loaned some.

Ques. How much did you loan, and to whom?

Ans. I loaned David Greenway $2,700 (either $2,600 or $2,700); I loaned Dodge & Manville, carriage manufacturers at Ripon, $500; I loaned Hinton, a wheat-buyer of that place, $1,000; I loaned Capt. J. B. Jordan, of that place, $1,000; I loaned John McManman, of Milwaukee, $200; S. Park Coon, of same place, at various times, about $150, and various little sums, that I cannot call to mind, to other persons.

Ques. Between what years were these loans made?

Ans. Some in 1862, some in 1863; M'r Coon's at various times; whenever I happened to meet him he would get $10 or $15.

Ques. What was your agreement with Richmond W. Howland about coming here to give testimony in this case?

Ans. He agreed to pay my fare and my actual expenses both ways, and if I had to hire a man while I was gone, to pay his wages.

Ques. What further?

Ans. He agreed to pay my expenses while staying here.

Ques. Are any of the letters sent you by Richmond W. Howland, except the one here produced, in this State?

Ans. They are not.

Ques. How long did your interview with M'r Blake last?

Ans. I couldn't say within a minute or ten minutes of what it
182 was; it might have been half an hour, or a few minutes more or less than that.

Ques. Where was Richmond while you were there?

Ans. After the interview I went to his house and found him there.

Ques. Where did he live at that time?

Ans. I think it was on Wisconsin st., back of the jail; that is my impression.

Ques. What did you say to him when you found him there?

Ans. I repeated the conversation I had with M'r Blake. I told him I would have nothing to do with it, for I was satisfied from M'r Blake's conduct that he intended to beat him out of the property.

Ques. Where did you go after that?

Ans. I left his house and got ready to go home on the first train.

Ques. Did you see anybody at Blake's office while you were having the interview with him?

Ans. I cannot say positively whether I was in the office or not. My business was with M'r Blake, and I do not remember who else was there or of seeing any one else there.

Ques. Were you engaged in making brick at Ripon at any time?

Ans. Yes, sir.

Ques. Anybody with you any time in the business?

Ans. Yes, sir; Capt. J. B. Jordan.

Ques. Were you in business with R. W. Howland at any time?

Ans. No, sir.

183 Ques. How was your business at Ripon, successful or otherwise?

Ans. It was varied—good a portion of the time. I lost about $6,000 by fire there.

Ques. Did you have any business with R. W. Howland while at Ripon?

Ans. Yes, sir.

Ques. What was it?

Ans. I traded for a buck-board with him, from which I came near getting my neck broke, and a lumber-wagon I got of him. I bought some brick-moulds of him; I bought some cast-iron doors of him and a couple of trucks, and also when I was burning brick there once he came through selling patent-rights. I was pretty busy at the time and short, and he helped me burn a kiln of brick. I cannot call to mind any other deal.

Ques. How long did you know Eugene Howland?

Ans. I couldn't say how long—into a year or six months. He was there a number of years, two or three, I think; that is my impression. I could not tell what years.

Ques. Did you do any other business on the day you saw M'r Blake?

Ans. I cannot recollect any.

Ques. In giving your testimony as to the conversation between you and M'r Blake, have you stated the language used between you?

Ans. As near as I could; have given the substance of it.

184 Ques. Where did you leave Howland when you started to go over and see Blake?

Ans. When I started to see Taylor I left Howland in front of the post-office. After I saw M'r Blake I left M'r Howland at his residence. I had only two interviews with him that day.

Ques. What interest did Howland offer to pay you?

Ans. The interest that was talked of was ten per cent., & then pay for taking care of the building in addition. Nothing was specified for this.

Ques. Did Richmond W. Howland ever tell you how much he put into that block?

Ans. M'r Howland told me at the interview I had with him previous to that time, that it had used up Eugene, and he (Eugene) had had to borrow of his father, and he was afraid his father would have to lose his farm.

Ques. How much did he say that he himself had put into the block?

Ans. He never told me.

Redirect examination:

Ques. When you said that M'r Howland told you at the interview you had with him previous to that time that the building of this block had used up Eugene, &c., what time do you refer to?

Ans. I refer to the time I had an interview with him in the summer or fore-part of the fall of 1862, which I have spoken of before.

185 Ques. In your negotiation with Blake in reference to taking the title to the Howland block, did he appear to understand how Isaac Taylor was holding the property?

(Objected to as incompetent & improper because it is not asking for a fact, but the impression of the witness, & because the witness has already answered.)

Ans. Yes, sir; all our negotiations were based on the principle that he was holding it for Howland, and he was only going to transfer it to others.

Ques. How?

Ans. For the same purpose.

Ques. At the time of that negotiation did you know in whom the title to that property had previously stood?

Ans. Only from hearsay. I had understood from M'r Taylor and from M'r R. W. Howland that it stood in the name of Eugene Howland.

Ques. When you told Richmond W. Howland, after your negotiation with Blake, that you were satisfied that Blake was going to beat him out of the property, what, if anything, did Howland say in reply?

Ans. He said that he did not believe it—that he did not believe it on account of his friendship with M'r Blake, and his wife being almost a member of his (Blake's) family. I think he told me that he and his wife were married there, and that his wife was related in some way to

186 either M'r or M'r's Blake, and my impression is it was to M'r's Blake, but am not certain about the relationship. I told him time would tell, and bid him good day & left.

Recross-examination:

Ques. You have no difficulty in recollecting these conversations?

Ans. That was my business there, and I lay over a train for that purpose, according to previous agreement.

Ques. You can't tell whether he was in the shop or office?

Ans. I could not tell. There might have been fifty men there, & there might not have been five. My mind was charged with my business, and when that was done I left.

J. W. ENGLISH.

Def'ts' Exhibit No. 12.—*Edw. Kurtz, Examiner in Chancery.*

RACINE, *April 27th*, 1874.

M'r ENGLISH:

DEAR SIR: Enclosed please find order for $20 to bring you here according to agreement, and will settle with you, and furnish you money to go home with, and satisfy you for your time. Last week Blake & Elliott met with a regular Bull-Run disaster in their case. Our attorneys set a trap for their attorneys several months ago, and last

187 week they walked right into it, and took the bait, and did not take the hint until they were fairly caught. The result has been that we have virtually impeached Blake & Elliott, and destroyed their evidence, as we had six good witnesses to come right up & place them in the lie, and that, too, on the main issue in the case. Notwithstanding our good success, we do not propose to let a screw go unturned in this case. Blake has denied all knowledge of any arrangements with Isaac Taylor, and also denied of having any conversation whatever with J. W. English about the Howland block in any form. A. P. Dutton,

A. P. Dickey, & R. A. Burdick have all been to Milwaukee and faced them right down in the lie, and B. & E. are the blankest-looking men you have seen for many a day. I have taken hold of this case in right good earnest, because I knew I was on the side of right & justice, and, God being my helper, I expect to succeed in the end.

Please write me what train you will leave Carroll City on, and what day. You should take plenty of time, so that you can have a good rest before going to Milwaukee Monday morning. I will meet you at the depot and take you to my house. You had better leave Carroll Thursday, & Friday morning sure. It cannot take more than an
188 hour to get through with you when you are once on the stand.

Answer this letter at once, informing me when you start. We design closing the whole evidence in this case on our part at that time, and should you disappoint us it might be months before we could get another hearing. So you will see the importance of coming at this time.

Very respectfully,

R. W. HOWLAND.

Circuit court of the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of Horatio T. Taylor (recalled) and M'r's Ellen M. Howland, on behalf of the complainant in the above-entitled cause, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

MONDAY, *May 11th*, 1874.

Present, D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

189 *Deposition of Horatio T. Taylor, recalled.*

And the said HORATIO T. TAYLOR, being recalled on behalf of the complainant, deposes and says:

Ques. Do you recollect of making a sale while you were sheriff of Racine County, in a suit of Hetrick & Wiltsey against Eugene Howland, which was brought to enforce a mechanic's lien on the Howland block?

Ans. I recollect of making such a sale, but not while I was sheriff; it was while I was under-sheriff.

Ques. When was the sale made?

Ans. I think, in May, 1860.

Ques. What was the amount of the purchase-money at the sale?

(Objected to as not being the best of evidence.)

Ans. One thousand dollars.

Ques. What was the amount due on the judgement at that time, including costs on sale?

Ans. About seven hundred & fifty dollars.

Ques. Who was the purchaser?

(Objected to, as the report of sale is the best evidence.)

Ans. It was bid off by Henry T. Fuller, in the name of Daniel P. Rhodes.

Ques. Was the purchase-money paid at the sale, or afterwards to the sheriff?

(Objected to, as the report of the sale is the best evidence of that.)

Ans. Not to my knowledge; I mean that I don't think that the money ever passed through my hands.

Ques. State how it was done.

(Objected to, as incompetent and immaterial, and for the reasons above stated.)

190 Ans. The property was bid off by M'r Fuller for M'r Rhodes. After making my report of sale, I drew a receipt for the money, & had Strong & Fuller sign it. That receipt is part of the report of sale and attached to it. I took two receipts—one for the amount due on the judgement for debt and interest, and one for the costs of the suit before judgment, or all the costs except costs of sale—and both receipts are attached to the report of sale.

Ques. How was the matter of the surplus arranged, if at all?

(Objected to same as last.)

Ans. That is a matter of surmise with me; I know it was not paid into my hands.

Ques. Do you know anything about it, or was there any understanding between you & the parties interested about it; & if so, what was the understanding?

(Objected to as the witness has already answered that it would be a matter of surmise with him, & because it is incompetent, the report of sale being the best evidence.)

Ans. There was an understanding about it; it was that it was Isaac Taylor's matter, and he would fix it up with the attorneys in some shape.

Ques. Who was this M'r Rhodes?

Ans. He was some acquaintance of Isaac Taylor's. He lived in Ohio.

Ques. Were you engaged in any other business in 1862 than that of sheriff of Racine County?

Ans. I shaved notes occasionally. I don't suppose I was in any other legitimate business that year.

191 Ques. Were you engaged in the mercantile business, or had you any interest in the mercantile business that year?

Ans. No, sir.

Ques. Were you the owner of a store, or interested as owner in a store, where mercantile business was carried on?

Ans. Previous to that time I had sold my interest in the store and given a bond for a deed. I think I must have sold it in 1857 or 1858, or somewhere along there.

Ques. Were you engaged in the mercantile business after 1862, and when did you commence & where?

Ans. Yes, sir; I commenced in the spring of 1863, in about the month of April or May, on the cor. of Ma'n & 6th streets, Racine, in the same store I occupied when in business before I was sheriff & deputy sheriff, and the same one I occupy now; and it is the same property I sold and gave a bond for a deed for.

Ques. May it have been as early as the first of April?

Ans. My impression is that it was later than that. It is a matter of record at home; I could tell if I was there.

Ques. Who carried on business in this store while you were sheriff & deputy sheriff during 1861 & 1862, and a year or two prior to that?

Ans. In 1861 & 1862 it was carried on by S. Smith & Co., a firm company of Samuel Smith & Matthew B. Mead. When I first went into the sheriff's office I was there six years. I kept my business running

under the name of Taylor & Smith. Afterwards, in the summer of 1857 or 1858—I don't recollect which—I sold out my interest in the
192 business, stock in trade, and in the building to M'r Mead, and was not interested in the business after that until the spring of 1863, except that I had given a bond for a deed of the real estate. I got my pay for the stock in trade.

Ques. Are you acquainted with the wife of R. W. Howland?

Ans. Yes, sir.

Ques. Did you know her before her marriage to M'r Howland?

Ans. Yes, sir.

Ques. Where was she living at that time & before her marriage?

(Objected to as immaterial & and not proper testimony in reply.)

Ans. When I became acquainted with her she was living at M'r Blake's.

Ques. How long did she live there before her marriage?

(Objected to as before.)

Ans. I don't think I could tell; my impression is it was several years—two or three; I couldn't tell definitely.

Ques. During your negotiation with M'r Blake in reference to this property was anything said by him as to the value of it, and what was said?

(Objected to as incompetent & immaterial & not rebutting testimony, and because the witness has already stated all he recollected about the conversation.)

Ans. I don't remember of anything said as to the value. We talked about what the property was paying—the way it was rented. In speaking about the investment, it came up between us that the property was paying 10 per cent. on $18,000 gross. I don't recollect which one of us said it, whether I said it to him or he to me.

193 Cross-examination:

Ques. When did you begin business in the store on the corner of Main & 6th st's?

Ans. In 1853 or 1854.

Ques. What business did you carry on there?

Ans. Groceries, provisions, & dry goods when I first went there.

Ques. After the time mentioned, when did you first cease to do business there?

Ans. I think in the summer of 1857.

Ques. Where did you go from there?

Ans. I went from there to the jail.

Ques. In what capacity?

Ans. As jailor & under-sheriff.

Ques. Who was the sheriff at that time?

Ans. Timothy D. Morris.

Ques. Who took your store when you left it in 1857 and went into the jail?

Ans. M'r M. B. Mead took my interest in it. I had a partner; M'r Samuel Smith was my partner.

Ques. Then, did M. B. Mead & Smith begin business there at that time together?

Ans. At the time I sold out they did.

Ques. How long after you went into the jail was it that you sold your interest to M. B. Mead?

Ans. I should think from six to eight months.

Q. Did you retain your interest in the business with Smith six or eight mo's after you became jailor & under-sheriff?

Ans. I did.

194 Ques. Did you continue to be jailer & live in the jail with your family during M'r Morris' term of office?

Ans. I did.

Ques. When did that term expire?

Ans. I think in December, 1858, or 1st of January, 1859.

Ques. During all of that time who was the owner of the store-building on the corner of Main & 6th st. which you had occupied?

Ans. The title was in me and M'r Smith until the time I sold out to Mead.

Ques. When did you sell to Mead?

Ans. My impression is it was during the summer of 1857.

Ques. Did you continue to be jailor & under-sheriff, or either, under Sheriff Everett, the successor of Sheriff Morris?

Ans. I was both under sheriff & jailor under him.

Ques. When did you and your family go out of the jail permanently?

Ans. In the last of December, 1860.

Ques. When did you become sheriff?

Ans. The first Monday in January, 1861.

Ques. Who then took you' place in the jail as jailor?

Ans. Reuben North.

Ques. Did he remain there during your term of office?

Ans. He did not.

Ques. Who succeeded him?

Ans. Jesse L. Burch & William H. Jenks succeeded him, and remained there until my term of office expired—until January, 1863.

Q. At what time did Jenks go into the jail as your jailor?

A. About the time the 22d regiment left Racine, in the latter part of the year 1862.

195 Q. Is M. B. Mead the person to whom you gave the bond for a deed which you have spoken of?

Ans. Yes, sir.

Ques. Did you take back from him the interest you sold to him?

Ans. Yes, sir; the interest in the store-building and real estate, but not the stock.

Ques. When was that?

Ans. I think it was in the spring of 1863—April or May.

Ques. Will you furnish the exact date when that transfer was made?

Ans. Yes, sir; I can't do it here.

Ques. When did you return to your former business in that store?

Ans. It was in the spring of 1863; I can't tell here the exact date, but I can at home.

Ques. Will you furnish the exact date?

Ans. Yes, sir; June 2nd, 1863.

Ques. Has not that store for many years been popularly known as Taylor's corner or Taylor's store?

Ans. I should presume likely it had.

Ques. Has not your name been identified with that corner since you first began business there?

Ans. I should presume that it had.

Ques. Was that not the fact while you were jailor, under-sheriff, & sheriff of Racine County?

Ans. I don't know how that was; I should think to a certain extent it was.

Ques. While you were jailor and sheriff of Racine County, were you not frequently at the store referred to?

196 I presume I was, more or less, because I did most of my purchasing of groceries there.

Ques. During that period, were you not frequently there to sit and converse with acquaintances?

Ans. I don't think I was. I have no recollection of ever setting down there; but I might, I was in and out frequently.

Ques. Did you at that time understand that the success of M. B. Mead in paying for his interest was dependant upon a successful business there?

Ans. I don't know that I did, particularly.

Ques. Is Samuel Smith, by marriage, a relation of yours?

Ans. Yes, sir; our wives are sisters.

Ques. While you had been engaged in business at that store, has a son of R. W. Howland been in your employ?

Ans. He has.

Ques. For what period?

Ans. For over a year.

Ques. How recently?

Ans. He was there this past winter for a short time temporarily.

Ques. Do you recollect any other places than the residence of M'r Blake where M'r's Howland lived before her marriage?

Ans. Yes, sir, I do; places where she was for a short time; one was a family by the name of Billings; another at a family by the name of Smith—Harvey Smith.

Ques. How have you learned the facts in relation to the time of the sale in the case of Hetrick & Wiltsey ag't Eugene Howland, the

197 amount of the purchase-money, its payment at the sale, & the amount due on the judgment?

Ans. I learned the time of sale from my books; the am't due I took from the judgment-roll; the amount of purchase-money I got both from memory & from the books, and the payment of the purchase-money I got from memory.

Ques. When did you examine the judgment-roll?

Ans. This morning.

Ques. Where & at whose request?

Ans. At the office of the clerk of the court in Racine. M'r R. W. Howland asked me if I recollected making the sale, and I told him I did. He said he wished I would refresh my memory about it. He asked me to come to Milwaukee to testify in relation to it, and I then went & looked at my books and at the record.

Ques. At the time of your conversation or conversations with M'r Blake in reference to taking the Howland block, what relation did R. W. Howland sustain to the brick-yard referred to in your former testimony, or in what character did he carry it on?

(Objected to as not cross-ex'n, and immaterial.)

Ans. That is a pretty hard question to answer. The title to the brick-yard, I guess, was in Blake, but M'r Howland was running it.

Ques. Do you know what R. W. Howland was doing on either of the days when you had conversation with M'r Blake about the Howland-block property?

(Objected to same as last objection.)

Ans. My impression is that he was making brick?

198 You have spoken about an understanding in relation to surplus money realized at the sale in Hetrick vs. Howland; did you hear

any one interested in the sale say anything about the surplus at that time?

Ans. I can't tell whether it was said at that time or when I went to Strong & Fuller's office to close up my report.

Ques. Who said anything about it at M'r Fuller's office and who was the understanding with?

Ans. My impression now is it was with M'r Fuller himself.

Ques. What did he say?

Ans. I couldn't give the words now, but the idea conveyed to me was that Isaac Taylor was the real purchaser, or the man who paid up the lien, and for some reason it was bid off in the name of M'r Rhodes. From the confidence I had in the law-firm of Strong & Fuller, I made my report as if the surplus moneys were paid in, although they were not actually paid. In all the foreclosure sales, where Strong & Fuller were the attorneys, I don't remember of a case where the purchase-money was paid to me as an officer. I didn't even collect the sheriff's costs. Strong & Fuller did the disbursing.

Ques. Was this particular case referred to in that respect treated like all other foreclosure cases you had from Strong & Fuller?

Ans. I don't call to mind now a case where I had any surplus moneys. I should say it was—outside of a case where there were no surplus moneys.

H. T. TAYLOR.

199 *Deposition of Ellen M. Howland.*

ELLEN M. HOWLAND, being duly sworn as a witness on behalf of the complainant, deposes & says:

I know Eugene Howland, the complainant, and also Mess'rs Blake & Elliott, the defendants. I am the wife of R. W. Howland. Have been married twenty-three years. Prior to my marriage I was making my home at M'r Blake's. I think I had made it my home between three & four years before that time. I recollect the circumstance of the Howland block being transferred from Isaac Taylor to Blake & Elliott. I should think that was about ten years ago. I can't tell exactly.

Ques. Did you have a conversation with M'r Blake with reference to his taking the property just before the transfer was made?

(Objected to as incompetent & immaterial.)

Ans. I did.

Ques. How long before?

Ans. I think it was the same day that he made the arrangement with M'r Taylor.

Ques. Where did this conversation take place?

Ans. It was on the sidewalk, very near M'r H. T. Taylor's store.

Ques. State what that conversation was as nearly as you can recollect it.

(Objected to as incompetent & immaterial, and not rebutting testimony.)

200 Ans. I met M'r Blake on the street. I asked him if he had a talk with M'r Howland before leaving. He said that he had, and I requested that he should take the property.

Ques. State what was said by him and by you. Give the language as nearly as you can.

(Objection same as last above.)

Ans. I wished him to take the property rather than any other person.

He said that he did not think that M'r Taylor would let him take it for just the amount of the mortgage. I told him I thought he would, for I had just had a conversation with Isaac Taylor about it, and M'r Taylor said he would let him have it, and I told him if he did not think so, I would go right with him and see Isaac Taylor about it. He said he would go and see Isaac Taylor first, and if he would let him have it, he would let me know. I told him that at the time M'r Howland left home he wanted me to see M'r Blake about taking the property, as M'r Howland had talked before he went away with M'r Blake. M'r Blake made answer that if he could make the arrangements with M'r Taylor, as talked of, he would make the bargain; but I should promise him one thing, that was, not to annoy him about the property until paid for, or say anything to him about it, because he thought M'r Howland's salary would be all that he could do to take care of his family, as M'r Blake knew he had had nothing for his services while he was at work there at the building. M'r Blake knew we were very poor then, had
201 nothing to live on, and I wished him to take the property, because I thought he was a good, honest man. And he said he needn't expect anything for M'r Howland's services until the rents paid for the property.

Ques. Did he promise in that conversation to go and see M'r Taylor on the subject and report to you about it? State what he said about it.

(Objected to same as last above.)

Ans. He told me that he would go and see Isaac Taylor, and he says, now you go home, and I'll make the arrangement with Isaac Taylor if he will do as you say he will. And he started, as I supposed, for Isaac Taylor's. At the time he told me to go home he further said he would go and see Isaac Taylor, and let me know what Isaac Taylor said before or by three o'clock, and let me know all about it.

Ques. Did you see him again that day?

(Objected to.)

Ans. I did; he came back to our house, where we were living before that time, and said that he had made the arrangement with Isaac Taylor, and then I asked him how he had arranged with him. He said he took the property just for the amount of the mortgage, and was holding it till paid for, by the rents, I suppose.

Ques. Was anything said in that conversation about your troubling him?

(Same objection.)

Ans. There was.

Ques. State what was said.

(Same objection.)

202 Ans. He said he wanted me to promise as I did before, that I would say nothing about the property to annoy him until paid for.

Ques. State whether you did promise him?

(Same objection.)

Ans. Yes; I did say I would not annoy him about it.

Ques. Did M'r Blake tell you anything which he said Taylor had told him about your annoying him (Taylor); if so, what was it?

Ans. Yes, he did; M'r Blake said that Isaac Taylor said that he would get along with Richmond Howland, but I would annoy him about the property.

Cross-examination:

Ques. What is your age?

Ans. Am 45 years of age last April.

Ques. How old were you when you came to Racine?
Ans. I don't remember.
Ques. Where did you live prior to coming to Racine?
Ans. In a place called Solon, in Illinois.
Ques. Where did you first live on coming to Racine?
Ans. I stopped at D'r Slater's a short time.
Ques. What was your age when you came to D'r Slater's?
I don't remember; I can't tell.
Ques. Did you stay at D'r Slater's until he went to California?
Ans. I did not; I went from D'r Slater's to Harvy Smith's, where I stayed only a very short time. From there I went to M'r Billings', & from there to M'r Blake's.
Ques. Did you afterwards live at M'r's Wells'?
Ans. Not after I went to Blake's.
203 Ques. Did you live at M'r's Wells' while at Racine?
Ans. Only for a short time.
Ques. Did you live at M'r's Griswold's for a time?
Ans. No, sir; I don't remember of ever being there.
Ques. Did you not work for Charles Allen for a while?
Ans. I was living at M'r's Blake's and M'r's Allen was a neighbor near by, and she had a very sick child, and sent over for me to come over and sit up that night with the child. The next morning she wished me to stay the day through, for she thought the child could not live until the next night. I stayed until the child died, and I think a day after. It only lived a few days, and I only stayed to take care of the child.
Ques. Did you work for M'r's Parker?
Ans. I did not.
Ques. Did you work at any time for Silas Lefler?
Ans. I did not; we boarded there after we were married.
Ques. How did you come to interest yourself in this Howland block?
Ans. Because my husband's services were all in that block.
Ques. How long were his services in the block?
Ans. I could not tell; since the very beginning of the building of the block. He always had the management of the block as agent.
Ques. Did you or your husband have any property at that time?
Ans. No; we did not.
204 Ques. Did you have any property prior to that time?
Ans. Not at all, that I knew of.
Ques. Did you know of any business that your husband had been engaged in prior to that time?
(Objected to as not cross-ex'n, and as immaterial.)
Ans. He worked in the bookstore awhile for his father and M'r Adams, his father's partner.
Ques. Was that the only capacity that you knew him to work in, in that store?
(Same objection as above.)
Ans. That is all I ever knew, as near as I can recollect.
Ques. What was the first thing that was said between you and M'r Blake, when you met him on the sidewalk?
Ans. I asked him if he had had a talk with M'r Howland before he went away. Whether I said that first, or asked him first to take the property, I don't recollect.
Ques. What was the next thing that was said?
Ans. I said to him, I wished him to take it, that I would rather he would take it than any other man; I told him I had seen Isaac Taylor, and that Isaac Taylor said he would let him have it for the amount of

the mortgage, if he would do as talked of about the property. M'r Blake said he thought he would not. I told M'r Blake that I would go with him and see Isaac Taylor if he wished me to. He said it was not necessary; that he would go & see Isaac Taylor himself, & would let me know what Isaac Taylor said before three o'clock.

Ques. Is that the purport of what was said between you?

Ans. M'r Blake spoke of my annoying him, and made me
205 promise that I would not annoy him about the property, nor say anything about it, until the property paid for itself, or, as I supposed, until the rent paid for it. He made the remark that M'r Howland would have all he could do to support his family with the salary he had. M'r Blake knew we were very poor at that time, & M'r Howland had had nothing for his services.

Ques. Did you not at that time request M'r Blake to take the title to the property, and hold it for M'r Howland until he could redeem it, and did he not reply that M'r Howland's salary would no more than support his family?

Ans. No, I did not; there was no such conversation.

Ques. How came he to say then that M'r Howland could no more than support his family with his salary?

Ans. I don't know why he should say it, any more than the way he talked about our family matters in general.

Ques. Had you not spoken at that time about M'r Howland's applying a part of his salary toward paying the amount that Blake would have to pay Taylor?

Ans. I had not.

Ques. State then how it occurred that he spoke of Howland's salary being no more than enough to support his family?

Ans. I can't tell how he came to speak of it.

Ques. Did you say anything to him about the brick-yard at that time, or he to you?

Ans. I don't remember that anything was spoken about the brick-yard.

206 Ques. Did you know at that time that M'r Blake had bought a brick-yard for your husband?

Ans. I did not; don't know anything about the brick-yard arrangements.

Ques. Did you live on the brick-yard property at any time?

Ans. I did, part of one summer. Did not move there; just went up and did the work for the hired men.

Ques. Did you ever have any other talk with M'r Blake about this property, except the one you have spoken of?

(Objected to as not cross ex'n, & as immaterial.)

Ans. I did.

Ques. Who was present at the conversation you had near Taylor's store?

Ans. I don't know that any one was.

Ques. Was there any one present at any of the conversations you had with M'r Blake on this subject?

(Same objection.)

Ans. I don't remember now, I had so many of them.

Ques. Did you have a conversation with him at his house abou it?

(Same objection as above.)

Ans. I don't think I ever did with Mr. Blake at his house. I don't remember now that I did.

Ques. You don't recollect of anybody being present at any of the conversations with him on the subject?

(Same objection as last above.)

Ans. I do not.

Ques. Where did you say that the second interview took place that you had with Mr. Blake that day?

Ans. At our house.

Ques. Where did you live then?

207 Ans. In a house, I think, owned by Horatio T. Taylor, back of the jail, on Wisconsin st., between 5th & 6th st's.

Ques. Who lived in your family at that time?

Ans. I don't think I had any one but my children & myself. I might have had a hired girl—don't remember.

Ques. How old were the children then?

Ans. Charlie, the eldest, must have been nine or ten years old; Eddie, the next, was two years younger; the baby was a few months old; Nellie was five years old; Minnie must have been not quite two years old. That is it as near as I can tell now.

Redirect ex'n:

Ques. You spoke of M'r Howland having gone away before you had this conversation with M'r Blake; about how long was it before you had the conversation that he went away?

Ans. I think only a day or two.

ELLEN M. HOWLAND.

208 *Deposition of Silas F. Lefler.*

Circuit court of the United States for the eastern district of Wisconsin.

In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Silas F. Lefler, a witness on behalf of the complainant in the above-entitled cause, taken, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

TUESDAY, *June 30th*, 1874.

Present, D. G. Hooker, counsel for complainant.
" Cha's E. Dyer, " " defendant, and the defendant James T. Elliott in person.

And the said SILAS F. LEFLER, being duly sworn, depose' & says:

I am 51 years of age; I reside in Chicago, Ill.; am carrying on a market there. I resided in Racine, Wis., at one time, and moved from there, I think, two years ago last November. Previous to that time I had lived in Racine about twenty-five years. I knew the defendants, Blak & Elliott, there. I know the property in Racine known as the Howland block. I knew at the time by hearsay that that property was conveyed by Isaac Taylor to Blake & Elliott, and I heard it also from them afterwards.

209 Ques. After that time did you have a conversation with the defendant Blake in reference to the manner in which they held the property?

Ans. I did.

Ques. State what that conversation was.

(Objected to as incompetent & immaterial.)

Ans. I can't tell whether I asked him the question myself, or whether he told me voluntarily; but at all events he told me that Blake & Elliott were carrying that property, and signified that it would pay for itself if the rents kept up, so that Howland, or the Howlands, would get it back in ten years or so. That is about the substance of his statement.

Ques. Did you have a conversation after that time relating to this property with M'r Elliott?

Ans. I think I did not at that time, but heard him make a statement afterwards in Burch & Bruce's store. The conversation was principally with M'r Fred'k W. Bruce.

Ques. State what that conversation was.

(Objected to as incompetent & immaterial.)

Ans. I think M'r Elliott was in there having a conversation with M'r Bruce about the leaking of the roof, and also about the price of the rent. I recollect Bruce asking him what was his price for the building, or what it was worth, and he said it was not theirs to sell, but supposed it was worth thirty thousand dollars, or it may be thirty-five thou-
210 sand dollars; at any rate, I thought it a high price; and he carried the idea that all they wanted out of it was the money they had in it, and stated what that was, namely, nine thousand six hundred dollars, or ten thousand dollars at most, and then turned and went out. He had a little account-book in his hand at the time, and carried the idea that he had to keep a separate account of his receipts and expenditures on that building. I don't know that he used those words, but that he had to keep a strict account with that building. My impression is that I asked him why that was, and I understood from his answer that it was because of an agreement between the parties.

Cross-examination:

Ques. In what year did you have the conversation referred to with M'r Blake?

Ans. My impression is it was in 1864 or 1865.

Ques. In which of those two years do you think it was had?

Ans. My impression is it was in 1865, but I may be mistaken.

Ques. In what time of the year was it?

Ans. My impression is it was in the latter part of the winter or in the spring.

Ques. Where was the conversation had?

Ans. In Blake & Elliott's office.

Ques. Who was present?

Ans. I think no one.

211 Ques. What was the first thing said?

Ans. I couldn't tell you.

Ques. Who spoke first about the Howland block?

A. It would be a hard matter for me to answer that. I can't tell you.

Q. Can you give the words spoken by M'r Blake on that occasion?

A. I have given it, as I understood the words, in my direct examination, to the best of my memory.

Q. Have you given the conversation in your direct testimony as fully as you are able to do?

A. I think I have.

Q. Do you know Richmond W. Howland?

A. I do

Q. In that conversation what Howland did you understand M'r Blake to refer to?

A. I understood the Howlands. He did not state R. W. Howland or Eugene Howland in the conversation.

Q. What Howland was referred to when the conversation began?

A. Richmond W. Howland.

Q. Was any other Howland particularly mentioned in the conversation?

A. No, sir; not to my recollection.

Q. How long after that time did the conversation with M'r Elliott occur?

A. I think it was a good while after that.

Q. Name the year.

212 A. M'r Dyer, it would be impossible for me to name the year. It might have been the same year; it might have been the next year.

Q. In what time of the year was it?

A. I'll be hanged if I can tell. I know it was bad weather.

Q. Have you ever since remembered the character of the weather on the day when the conversation was had?

A. What do you mean by that question, if I always thought of it?

Q. I mean what the question says.

A. I should think not, only when I happened to get it in my mind.

Q. In what part of M'r Bruce's store was the conversation had?

A. Back by the stove.

Q. Who began the conversation, M'r Bruce or M'r Elliott?

A. I can't tell you; they came down-stairs and had quite a conversation about the building. There was some repairs of some kind up-stairs that Bruce was wanting him to attend to. I may be mistaken about its being the roof.

Q. Do you now distinctly remember that M'r Elliott said that he had to keep a separate account of his receipts and expenditures on the building?

A. Yes; that was the tenor of his statement as near as I can recollect, that he had to keep a separate account of it from his other business.

213 Q. Did you get the idea that he had to keep a separate account from the fact that he had a book in his hand?

A. No, sir; from his statement.

Q. Did M'r Bruce hear all the conversation?

A. I couldn't tell you.

Q. Was M'r Bruce present during all the conversation?

A. I think he was in the store all the time.

Q. Was you once in the employ of Blake & Elliott?

A. Yes, sir.

Q. Since you left their employ have your relations with them been pleasant or otherwise?

A. They have always been pleasant enough for me to speak to them if they would to me.

Q. Is it not true that since you ceased to be in their employ your relations with them have not been pleasant?

A. I have not had much to do with them since; have had no particular occasion to.

Q. Did not your employment under them cease because of disagreement between you?

A. No, sir.

Q. Is it not true that, since you left their employment, you have not been on social terms with, or felt kindly towards M'r Blake & M'r Elliott?

A. I have always been social with them; talked with them freely; always passed the time of day with M'r Blake when I met him, & also with M'r Elliott. There is no particular friendship between us
214 & no particular ill-will on my part. M'r Elliott did not recognize me to-day, but I don't know why it was, unless I was here as a witness. I did not come voluntarily; kept out of the way as long as I could, and only came because I was compelled to.

Q. Can you tell, on reflection, with more precision, when the conversation was had with M'r Elliott?

A. I have answered that.

Q. Can you state more precisely than you have already stated, in what year that conversation took place?

A. I cannot.

Q. Before testifying on this case did you ever tell Richmond W. Howland of the conversation with M'r Blake and M'r Elliott?

A. I don't know that I ever did. I understand what Howland heard about it came from my wife to his wife. I don't know but I have told him recently—think I did tell him the other day—that both Blake & Elliott had said they were carrying the property for Howland.

Q. Was the conversation with M'r Elliott you have referred to carried on between M'r Elliott & M'r Bruce?

A. My impression is that it was, the principal portion of it.

Redirect ex'n:

Q. Where was the store of Birch & Bruce, at which this conversation with Elliott took place, located?

A. On Main st., in the Howland block.

S. F. LEFLER.

215 Complainant's counsel offers in evidence a certified copy of a deed from Daniel P. Rhodes to Isaac Taylor, marked "Compl't's Exhibit E;" also, a certified copy of an agreement between Charles Clement & Isaac Taylor, marked "Compl't's Exhibit F;" also, a certified copy of a deed of Eugene Howland & wife to Jacob Wrattan, dated Nov. 16th, 1859, marked "Compl't's Exhibit G;" also, a certified copy of a deed of Jacob Wrattan & wife to Martin B. Throup, dated Jan'y 19th, 1860, marked "Compl't's Exhibit H;" also, a certified copy of a deed of Isaac Taylor to Martin B. Throup, dated Jan'y 24th, 1860, marked "Compl't's Exhibit I."

216 *Complainant's Exhibit E.—Edward Kurtz, Ex'r Chancery.*

Deed from Daniel P. Rhodes to Isaac Taylor.

This indenture, made this twenty-third day of July, in the year of our Lord one thousand eight hundred and sixty-two, between Daniel P. Rhodes, of Cleveland, in the State of Ohio, and Sophia, his wife, parties of the first part, Isaac Taylor, of the city and county of Racine, in the State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part

forever released and discharged therefrom, have remised, released, conveyed, and quitclaimed, and by these presents do remise, release, convey, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following-described lot, piece, or parcel of land, situated in said city of Racine, known as lot number twelve (12), in block number eighteen (18), according to the original plat of Racine made by Moses Vilas, surveyor, and recorded in the office of the register of deeds for said county of Racine.

To have and to hold the same, together with all and singular the
217 appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part hereto set their hands and seals the day and year first above written.

D. P. RHODES. [SEAL.]
SOPHIA L. RHODES. [SEAL.]

Signed, sealed, and delivered in presence of—
LOUIS BUCHOLTZ.
M. STUART.

STATE OF OHIO,
County of Portage, ss:

On this 28th day of July, A. D. 1862, came personally before the subscriber, a notary public in said county, Daniel P. Rhodes and Sophia L. Rhodes, to me well known to be the persons described in and who executed the above conveyance, and acknowledged that they had executed the same for the purposes therein set forth.

[SEAL.] M. STUART,
Notary Public.

Rec'd for record Aug. 1st, 1862, at 10 o'clock a. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from D. P. Rhodes to Isaac Taylor is a true and perfect copy of the original of record in my office, as recorded in volume 43 of deeds,
218 on page 60; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this twenty-seventh day of May, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Compl't's Exhibit F.—Edw. Kurtz, Examiner in Chancery.

Agreement.—Charles Clement to Isaac Taylor.

This agreement, made and entered into seventh day of July, in the year of our Lord one thousand eight hundred and sixty-two, by and between Charles Clement, of the city and county of Racine, in the State of Wisconsin, party of the first part, and Isaac Taylor, of the same place,

party of the second part, witnesseth: That whereas the said party of the second part is the owner of the north half of lot number eleven (11), in block number eighteen (18), according to the original plat of Racine, made by Moses Vilas, surveyor, and recorded in the office of the register of deeds for said county of Racine, said block number eighteen being situated in the first ward of said city of Racine; and whereas said party of the first part has a building now in process of erection upon said north half of lot number eleven (11); and whereas the said Isaac
219 Taylor, party of the second part, has this day conveyed to the said party of the first part a portion of the south wall of the building on lot number twelve (12), in said block number eighteen (18), known as "Howland's block," more particularly described in said conveyance; also, the right to use the north ten feet of lot number four (4), in said block, as an alley for the uses and benefit of the building above-named now in process of erection by said party of the first part; also a right to tap and use the drain built by the said party of the second part, over and across the north ten feet of lot number four (4) aforesaid, and also a right to anchor or fasten the building referred to now in process of erection to said south wall of said Howland's block, the said party of the first part, in consideration of the conveyance above named, and of the premises, has bound himself, and hereby does bind himself, his heirs, executors, administrators, and assigns, that from a point that is forty-nine and eight-twelfths ($49\frac{8}{12}$) feet easterly from the southwest corner of said Howland's block, and from an elevation equal to the height of the floor of the second story in said Howland's block, the north wall of said building now in process of erection by said party of the first part shall not be placed nearer to said south wall of said Howland's block than a distance of five (5) feet, which space from the top to the second floor is forever to remain open and uncovered, and not to be occupied for any use or purpose.
220 Witness my hand and seal.

CHARLES CLEMENT. [SEAL.]

Signed, sealed, & delivered in presence of—
HENRY T. FULLER.
ALBERT G. KNIGHT.

STATE OF WISCONSIN,
County of Racine, ss:

I, Albert G. Knight, a notary public of the State of Wisconsin, residing in the county of Racine, do certify that on this thirtieth day of July, A. D. 1862, Charles Clement, to me known to be the person who signed the foregoing agreement, came personally before me and acknowledged the due execution of the same for the uses and purposes therein mentioned.

Witness my hand and notarial seal.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

Rec'd for record July 31, 1862, at 4¼ o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of agreement is a true and perfect copy of the original of record in my office, as recorded in volume 43 of deeds, on page 56; that I have compared the same

with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this 17th day of April, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] W'M G. HYDE,
Register of Deeds Racine County.

221 *Compl't's Exhibit G.—Edw. Kurtz, Exam'r in Chanc'y.*

Deed from Eugene Howland & wife to Jacob Wratten.

This indenture, made this 16th day of November, in the year of our Lord one thousand eight hundred and fifty-nine, between Eugene Howland and Louisa Howland, his wife, of the city & county of Racine & State of Wisconsin, party of the first part, and Jacob Wrattan of said city of Racine, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of seven hundred dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quit claimed, and by these presents do remise, release, convey, and quit claim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first have in and to the following-described lot, piece or parcel of land, to wit: Lot four (4), in block eighteen (18), in the first ward of said city of Racine, according to the plat of the village (now city) of Racine, made by Moses Vilas, & of record in the registry of deeds in said city of Racine, reserving from said lot a strip ten feet wide on the north side thereof, which said ten feet is reserved for an alley.

222 To have and to hold the same, together with all and singular appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns; and I, Eugene Howland, one of the parties of the first part, do hereby covenant with the said party of the second part that I will warrant and defend the title to the said premises to the said party of the second part, his heirs and assigns, forever, against the lawful claims of any person claiming by, through, or under me, and against all judgments & other liens now existing against said property, including taxes.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

EUGENE HOWLAND. [SEAL.]
[SEAL.]

Signed, sealed, and delivered in presence of—
A. W. FARR.
J. H. HINDS.

STATE OF WISCONSIN,
County of Racine, ss:

On this 16th day of November, A.D. 1859, came personally before the subscriber, a justice of the peace in said county Racine aforesaid, Eugene Howland, to me well known to be the person described in and who exe-

cuted the above conveyance, and acknowledged that he had executed the same for the purposes therein set forth.

J. H. HINDS,
Justice of the Peace.

Rec'd for record Nov. 16th, A. D. 1859, at 2½ o'clock p. m.

223 STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Eugene Howland to Jacob Wrattan is a true and perfect copy of the original of record in my office, as recorded in volume 40 of deeds, on page 247. That I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this second day of July, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Compl't's Exhibit H.—Edw. Kurtz, Ex. in Chan'y.

Deed from Jacob Wratten & wife to M. B. Throup.

This indenture, made this nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty, between Jacob Wrattan and Harriet Wratten, his wife, of the city and county of Racine and State of Wisconsin, parties of the first part, and Martin B. Throup, of said city, county, and State, parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration of three hundred dollars in hand paid by the said party of the second
224 part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quitclaimed, and by these presents do remise, release, convey, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following-described lot, piece, or parcel of land, to wit: Lot four (4), in block eighteen (18), in the first ward of the city of Racine, according to the plat of said city (formerly village of Racine), of record in the registry of deeds of said county, excepting a strip of land *of land* ten feet wide off from the north side of said lot, which is reserved for an alley.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part hereunto set their hands and seals the day and year first above written.

JACOB WRATTEN. [SEAL.]
HARRIET WRATTEN. [SEAL.]

Signed, sealed, and delivered in presence of—
MARY CABORN.
LEWIS M. EVANS.

STATE OF WISCONSIN,
County of Racine, ss:

225 On this 19th day of January, A. D. 1860, came personally before the subscriber, a notary public in said county, Jacob Wratten and Harriet Wratten, to me well known to be the persons described in and who executed the above conveyance, and acknowledged that they had executed the same for the purposes therein set forth.

LEWIS M. EVANS,
Notary Public, Racine Co., Wis.

Received for record January 24th, A. D. 1860, at 9 o'clock a. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Jacob Wratten & w. to Martin B. Throup is a true and perfect copy of the original of record in my office, as recorded in volume 39 of deeds, on page' 384 & 385. That I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this second day of July, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Compl't's Exhibit I.—Edw. Kurtz, Exam'r in Ch'y.

Deed from Isaac Taylor to M. B. Throup.

This indenture, made this twenty-fourth day of January, in the
226 year of our Lord one thousand eight hundred and sixty, between Isaac Taylor, of the city & county of Racine and State of Wisconsin, of the first part, and Martin B. Throup, of said city, county, and State, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described real estate, situated in the county of Racine and State of Wisconsin, known and described as lot four (4), in block eighteen (18), of the first ward of the city of Racine, according to the plat thereof made by Moses Vilas, surveyor, and recorded in the register's office for the county of Racine.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

227 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

I. TAYLOR. [SEAL.]

[SEAL.]

Signed, sealed, and delivered in presence of—
LEWIS M. EVANS.
WALLACE PRATT.

STATE OF WISCONSIN,
Racine County, ss :

Be it remembered that on this ninth day of April, A. D. 1860, the above-named grantor, Isaac Taylor, personally appeared before me and acknowledged the foregoing instrument to be his free act and deed for the uses and purposes therein contained.

[SEAL] LEWIS M. EVANS,
Notary Public, Racine Co., Wis.

Rec'd for record April 9th, A. D. 1860, at 2½ o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss :

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from I. Taylor to Martin B. Throup is a true and perfect copy of the original of record in my office, as recorded in volume 40 of deeds, on page' 455 & 456. That I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this second day of July, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

228 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss :

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of Alvin R. Burdick, Albert P. Dickey, Achas P. Dutton, John W. English, Horatio T. Taylor, Ellen M. Howland, and Silas F. Lefler were taken before me pursuant to notice duly given and by consent of the counsel of the parties. That I was attended by the said counsel at the times and place as stated in the captions of said depositions, and by the said witnesses, who were of sound mind and lawful age, and that said witnesses were by me first duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions then by me reduced to writing in the presence of said witnesses respectively, & from their statements, and after carefully reading the same over to said witnesses respectively, they subscribed the same in my presence.

I further certify that the exhibits hereto annexed, & marked by me, respectively, Compl't's Exhibits E, F, G, H, and I, were offered in evidence before me, and are herewith returned with said depositions, and that the exhibit referred to in deposition of John W. English, & marked by me Def'ts' Exhibit No. 12, was produced before me, and is annexed to his said deposition. I have retained said depositions &

exhibits in my possession for the purpose of delivering the same,
229 with my own hand, to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said depositions and captions named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery, U. S. Cir. C't E. Dist. Wis.

230 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of Silas F. Lefler and P. Dickey, recalled on behalf of the complainant in the above-entitled cause, taken before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis., pursuant to notice given.

SATURDAY, *July 11th*, 1874.

Present, D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

Deposition of Silas F. Lefler, recalled.

And the said SILAS F. LEFLER, having been previously sworn, deposes & says:

Q. When did you commence working for Blake & Elliott?

A. My impression is it was in the spring of 1859.

Q. How long did you work for them?

A. I worked for them that year out and the next year, I think, about. I think I worked during the second season for so much a month.

Q. At the time of leaving them did you have a settlement with them?

A. I did; a final settlement.

231 Q. How did your account with them stand at the time of the settlement; did you owe them or did they owe you?

A. They owed me.

Q. Did they pay you any money on that settlement?

A. They did; they gave me a check for the balance due me, less $100 extra wages which I was to have that year by promise of M'r Blake, and the present of the highest cash sale I made during that season, which was $33.00, I think, and which I never got.

Q. State what took place at the time of this settlement.

(Objected to by def'ts' counsel as immaterial.)

A. The 1st, 2d, & 3d days of July, of 1860, I sold 27 fanning-mills, I think it was, and drove near 40 miles into town on the day I finished up the sales. I deemed it an extraordinary big work, and when I came to settle, Jim Elliott had charged me with $5 a day for those days' lost time. I kicked; in other words I was mad. I asked him what that was for. He said I was in town idle. I told him that was not so. He stuck to it that it was so, and that they furnished horse-feed and horses and

paid their men for that time. I then undertook to convince him of his mistake by citing to him this big sale. At that time I told him it was no better than stealing, and I would prove to him that he was mistaken by his own books, and asked him to get the book that the notes were booked in, and I would convince him. Part of the notes had been
232 collected, and the book would show whether I was telling a lie or him. He refused to get the book out of the safe. M'r Blake came in about that time, and spoke up & says, "Jim, that's so. I guess Lefler's right about that." He reached in and got the book out of the safe, and looked at it, and told M'r Elliott that he was mistaken and that I was right about it. M'r Elliott would not give up but that I was wrong, and that the notes were dated wrong, or I had made a mistake in dating the notes, and still insisted on charging me for the 2 or 3 days' lost time. That made me madder still, for the very fact that I had ordered these mills shipped, and when I got home found they had not been shipped, and I had to go to work & help ship them when I wanted to prepare for a holyday, and then at the settlement, when I came to find I was charged with this lost time when I had worked so hard, I felt put out about it. M'r Elliott said he had me charged with this lost time, but I did not look the books over to see if it was so. I then took exceptions to his treatment of me & told him to settle up with me, and if anything was due me I wanted it. It was done. He figured up & told me what amount was due me, and I claimed the extra $100 which had been promised me by M'r Blake. M'r Elliott replied that he knew nothing about that. M'r Blake then spoke up & said, "Lef., you lied to me; you told me that you were offered $100 more. I did promise you $100 on your saying that you were offered $100
233 more," or something to that effect. I still claimed the $100, but both utterly refused to pay it, on the ground that M'r Blake claimed that A. P. Dickey was jesting with me, and he did not consider it an offer. M'r Blake then says, "If you will go and get M'r Dickey, and he will say that he made you that bona-fide offer, I will pay you the $100, if I have to pay it out of my own pocket." I then replied that I was not obliged to run after M'r Dickey; that I had made a bargain with him for the $100 & the present, and I wanted it. I told them I wanted what was due me, and that they and I were done forever. Elliott then gave me a check for what he claimed was the amount due me. I can't give the amount. Then M'r Blake spoke up and said, "Now, Jim, Lef. thinks he ought to have that $100. You make out another check for $50 and charge it to L. S. Blake or Blake & Elliott, just as you please. By Christmas I am going to make Lef. a present of it." I then took the $50 check & said, "I don't consider this a present. I will endorse it on the $100 and still consider that you owe me $50," and I then left their office. I am not positive, on reflection, whether this $50 was given me in a separate check or added to the original amount he claimed was due me. On reflection I am inclined o think the two amounts were put into one check, but for two separate transactions.

Q. Blake & Elliott have each testified that you were discharged by them from their employment when you left; state whether that was so or not.

234 A. No, sir; I did not so consider it. I left them on my own account, and told them there was not money enough in California to hire me another hour.

Q. After you left them did they, or either of them, apply to you to employ you again?

A. Yes, sir; repeatedly.

Q. About how soon after you left them?

A. Just previous to the commencement of the next season; the season commenced some years about the 1st March and sometimes not until April. M'r Blake tried to get me to set a price what I would take, and offered me $200 more than I had been getting. This took place in the p. office in Racine. I told him plainly I would never work another hour for Jim Elliot. He remarked by saying "You need not work for Jim; you and I can do our own settling."

Q. M'r Blake testified the other day, in answer to a question whether you were dismissed from their employ, as follows: "He was, and still owes us to-day, and we cannot collect from him, for money he collected for us in the country, and which he refuses to pay over." Is that statement as to your owing him, and as to collecting money & not paying it over, true?

A. No, sir; it is false.

Cross-ex'n:

Q. Do you know A. H. Blake, of Chicago—brother of L. S. Blake?

235 A. Yes, sir.

Q. Did you say to him in Chicago a few days or a few weeks ago that you were coming up here to testify in this case; that you had nothing in particular against Blake, but that you would give Jim Elliott fits?

A. No, sir; it is a most damnable lie.

Q. Did you, at the time & place named, have a conversation with A. H. Blake, in which you said to him in substance what is before stated, or in which you used words to the effect of those contained in the preceding question?

A. I never told him I was coming here, but told him I would not come if I could avoid it; and, on the contrary, I was very cautious what I said, believing he was sent to me as a feeler.

Q. Did your employment with Blake & Elliott finally terminate before your year expired?

A. I don't understand the meaning of that question; whether you mean the year's services or the year 1860.

Q. Did your employment with Blake & Elliott finally terminate before the expiration of the last year for which you were employed by them?

A. For the life of me, I couldn't tell you. I think it was about the time of the close of the year. I think it was about the last of Dec. or 1st of Jan'y, but can't tell; I have nothing to refresh my memory by.

Q. After you left their employ at the time stated, did M'r El-

236 liott ever again endeavor to engage your services?

A. No, sir; not to my knowledge.

S. F. LEFLER.

Deposition of Albert P. Dickey, recalled.

And the said A. P. DICKEY, being recalled by compl't, deposes & says:

On your former ex'n you stated that you thought the building of Osborne & Osgood's was constructed in 1863; on reflection what do you say about it?

A. I find I was mistaken. On examining my books I find it was in 1862 that Osborn's building was put up.

Q. You stated also that your conversation with Blake about the

Howland property was at the time you had a conversation with him in reference to bricks for the construction of that building; upon reflection, may you not also have been mistaken as to the fact of the two conversations having taken place at the same time, and may not the conversation in reference to the brick have transpired at some other time?

A. I am not positive about it. I had several conversations with Blake about brick and the manufacture of brick, in which Blake was concerned with Howland, and I can hardly remember, and it
237 seems as if there was something about borrowing brick or paying for brick that went into Osborn & Osgood's building in the conversation of 1863 in which the Howland block was spoken of.

A. P. DICKEY.

238 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of Silas F. Lefler & Albert P. Dickey were taken before me pursuant to notice duly given and by consent of the counsel of the parties; that I was attended by the said counsel at the time and place as stated in the caption of said depositions, and by the said witnesses, who were of sound mind and lawful age, and that said witnesses were by me first duly & publicly sworn to testify the truth, the whole truth, & nothing but the truth, and their depositions then by me reduced to writing in the presence of said witnesses, respectively, and from their statements, and after carefully reading the same over to said witnesses, respectively, they subscribed the same in my presence. I have retained said depositions in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said depositions & captions named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, and of the Independence of the United States the 98th.

EDWARD KURTZ,
Examiner in Chancery U. S. Cir. C't E. Dist. Wis.

239 DEFENDANTS' TESTIMONY.

Circuit court or the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions in the above-entitled cause, taken pursuant to notice given before Edward Kurtz, on' of the examiners in chancery of said court, at his office in Milwaukee, Wis., on the part of the defendants.

WEDNESDAY, *February 4th, A. D.* 1874.

Present, D. G. Hooker, counsel for complainant; John T. Fish & C. E. Dyer, counsel for defendants.

Deposition of Elbridge G. Huggins.

ELBRIDGE G. HUGGINS, being duly sworn as a witness on the part of the defendants, deposes & says:

I am 49 years of age; I reside at Racine; am in the marble business; have resided in Racine 26 years the 3d day of April, 1874. I think I have seen the complainant in this suit; am not acquainted with him; I know the defendants, Blake & Elliott; I know the building in Racine known as the Howland block. I have dealt in real estate in Racine more or less ever since I have lived there. I knew something about the value of property in Racine, between the years 1859 and 1865,
240 so far as property I bought and sold was concerned. I think I had a general knowledge of how property was sold there between the years 1860 and 1864. I think property went down in 1857 and 1858 about as low as it could go, and should think that in 1863 or 1864 it was looking a little better. I bought and sold property in block 18, in the 1st ward of Racine. I sold a house in 1857 for $1,000, and bought it back in Feb'y, 1864, for $200. I sold a lot for $400 or $450 in, I think, the year 1856, and bought it back with a house on it, April 15th, 1865, for $375.00. I bought a house in same block, June 25, 1861, for $375.00, including the lot, and sold it afterward for $1,000, I think, in 1868. I bought the hotel in that block, April 18, 1866, for $6,700. That building is about 60 feet from the Howland block, south, on the same side of the street. It is the property formerly known as the Baker House, and known now as the Huggins House; it is seventy feet front. It is my impression that its depth is the same as that of the Howland block. It is four stories high; it is finished off with three stores on the ground-floor. The upper stories are finished off for a hotel, with parlors, office, reading-room, &c. I have been through the Howland block and know how it is finished. There is a basement under the ground-floor of the Huggins House, which is not part of the four stories.
241 I should think the outside of the Howland block was more expensive than the hotel, but that the inside of the hotel must have cost a great deal more than the inside of the Howland block.

Q. What was the fair market-value of the Howland block in the month of June, 1862?

A. Property was very low at that time; about as low then as at any time. I bought my house for $7,000, about, and should think that the Howland block was worth about the same, perhaps $8,000. I don't think a man could have been found at that time to have paid eight thousand dollars in cash for it. Business property in that block in the years 1862 or 1863 would not sell for its cost. I don't think there was any demand for real estate in those years, or any capital seeking investment there in real estate.

Q. Were there any special causes for the depression in price of real estate in those years?

A. Well, I think there was; the crash of 1857, and the city debt.

Q. What was the amount of the city indebtedness?

A. I think it was somewhere near $600,000.

Q. Were there any special assessments for war purposes?

A. Yes, sir.

Q. Do you think that affected the value of real estate?

A. I should think probably it would some.

Q. How did the rental value of real estate on the east side of the street compare with that on the west side in the years 1862 & 1863?

242 A. It was very difficult renting property on the east side of the street in those years. There were several stores that were vacant on that side of the street.

Q. Has the property on the east side of the street ever produced as high rentals as that on the west?

A. I don't think it has.

Q. Can you give any general idea of the difference as to stores of the same size and finish?

A. I don't know as I can. I should think probably there was a third difference in favor of the west side.

Q. Which is the principal business street in Racine?

A. Main street, on which the Howland block is situate.

Q. Are there any dry-goods stores on the east side of that street?

A. I don't think there are.

Q. Was there any particular increase of value in real estate in Racine between June, 1862, and April, 1863?

A. I don't think there was.

Q. About how many sleeping-rooms are there in the hotel building which you have spoken of?

A. About 50.

Cross-ex'n:

Q. You spoke of having bought and sold lots in block 18. On what streets did those lots front? I mean the lots other than the hotel.

A. On Chatham street, two of them.

Q. Is there any travelled street in front of those lots?

243 A. There is a street there now. There was not when I bought them. You can go in on the north end, and go the whole length of the block, and then to the right or left. 'Tis not graded through. It is not generally traveled as a public street of the city now. It was one of the streets of the original plat of the city.

Q. Who did you sell those lots to in 1856 or 1857?

A. I sold them to Charles Cornell, one house & two lots, and one to M'r Hickcox. I got $1,000 for what I sold to Cornell, and $400 for what I sold to M'r Hickcox. The $400 from Hickcox was paid, $50 a year, on mortgage. The mortgage was paid. He afterwards mortgaged it to another man, and it was sold on a mortgage. I bought it of a M'r Granger. I think he took it on a mortgage, but am not sure. The $1,000 from Cornell was paid, $200 cash and $800 on mortgage. I don't think that mortgage was paid. I can't tell whether it was foreclosed or not, but think it was. I sold the mortgage. I bought the property back from a M'r Lapham, in New York City or Brooklyn, through his agent here.

Q. After property declined as you have stated in Racine, when did it get back to its original value, if it ever has done so?

A. I don't know that I can tell when. I don't know that it has really got back. The last 2 or 3 years property has been improving all the time there.

Q. Was property as valuable in 1866 there as it was in 1859?

244 A. Property was very low there in 1866. I shouldn't think there was a great deal of difference.

Q. From whom did you purchase the hotel property?

A. From Latham Cornell, through his agent in Racine.

Q. How did Cornell acquire his title?

A. From foreclosure of mortgage.

Q. How was the property occupied at the time you purchased it from Cornell?

A. The hotel part was occupied as a hotel, the three upper stories. There was a bank and two stores on the ground floor. W'm Fabor occupied the hotel part as a hotel.

Q. About what rent did the whole property bring at the time you bought it?

A. I don't know that I can get at that. I don't know what it was rented for. The hotel part was rented for somewhere about $500. I don't know what the stores were rented for.

Q. What was the whole property rented for during the year after you purchased it?

A. About $1,600 or $1,700.

Q. What did the hotel part rent for the year after you bought it?

A. I think it was $700.

Q. What did each of the three stores rent for?

A. The south store, I think, $360; the bank paid me $20 a month, and the book-store $20.00 a month, and the news-office, I think, paid $12.00 a month.

245 Q. You said there was a difference, you thought, of about one-third in the rental value of the property on the east & west sides of Main st's. Was there that difference after the post-office was established on the east side of the street?

A. I should think there was that difference now, and always has been, though property on the east side has been a little better the last year or two.

Q. During the years 1862 and 1863 what rate per cent. should real estate on Main st. have brought as rent to have made a good investment?

A. I always thought property ought to rent for 15 per cent., and even more than that, to make it pay.

Q. What rate should it have paid in addition to the taxes, insurance, and repairs in those years to have made a good investment?

A. It ought to be 12 per cent.

Q. At the time you purchased this hotel, was it in good condition or had it been run down, and didn't it need a good deal of repairs?

A. I don't think I have laid out $25 on the stores, except a new floor in the book-store, since I had it. I should say the hotel was in good, fair condition. I painted it, & think that is about all I did to it.

Redirect ex'n:

Q. Do either of the lots or parcels of land which you sold and bought, other than the hotel property, front on 5th st. as well as Chatham st.?

246 A. Yes, sir.

Q. Is 5th st. a travelled street connecting directly with Main st.?

A. Yes, sir.

Q. State the aggregate amount of rent now realized by you per annum from the hotel property.

A. About $2,200—perhaps a little over.

Q. What per cent. should have been realized from rents of business property in Racine in 1862, 1863, & several years subsequent, including taxes, insurance, & ordinary repairs, and wear & tear, in order to make it a profitable investment?

A. I should set it at 25 per cent.

Q. Then is your former estimate too low?

A. I should think it was—ten per cent. too low.

Recross-ex'n:

Q. When were the assessments for war purposes that you have spoken of made?

A. I don't know as I can answer that. I think it was in 1863 and 1864.

ELBRIDGE G. HUGGINS.

247 *Deposition of John H. Palmeter.*

JOHN H. PALMETER, being duly sworn as a witness on part of the defendants, deposes and says:

I am fifty eight years of age. I reside in Racine, and have resided there 28 years next spring. Have no particular business now; have been dealing some in real estate; have been engaged in buying & selling real estate, more or less, ever since I have lived in Racine.

Q. What was the fact as to real estate being saleable between the years 1859 & 1865?

A. In the summer of 1857 came the panic that knocked real estate clear down. Before that people had run a little wild on real estate. It had run up beyond its value. After the panic of 1857 it ran down, and kept going down until, about the year 1860, it reached the bottom. There was no sale for it about the year 1860 and 1861. In 1862 there was a little more sale and a little more encouragement to invest in it, but it was very low even then.

Q. Was it difficult in 1862 and 1863 to find purchasers for business property in Racine?

A. Yes, sir; or any other property.

Q. Were you acquainted with the price that property brought in those years, when there were sales?

A. Yes, sir; in a great many cases.

Q. Did you know the Howland block in 1862 and 1863, and at the time it was built?

A. Yes, sir.

248 Q. What was the fair market-value of that property in April, 1863?

A. It is hard to tell what the actual value was, for property would not sell for more than half it had cost to build it. Judging from property that I bought & sold, and that I knew of being bought and sold about that time, I should say eight or ten thousand dollars was about the market-value of the Howland block.

Q. Which is the natural side of Main st. for business in Racine?

A. The west side was always considered a great deal the best.

Q. Which produces the largest rent?

A. The west side.

Q. How long has that been the case?

A. It has always been so—ever since I knew Racine.

Q. To what do you attribute the depression in real estate from 1859 to 1864, in Racine?

A. I think Racine had run a little wild on real estate before that, and, then, there was the railroad indebtedness of the city, plank-road indebtedness, and the whole city indebtedness, & the general stagnation of business.

Q. Did the war have anything to do with it?

A. I should think not, but it did not come up much until the close of the war.

Q. Was it difficult to rent property in Racine at that time?

A. It was; there were a great many dwelling & business houses for rent.

249 Q. State whether it was difficult for owners of real estate to obtain rent enough to pay for taxes & insurance?

A. In a great many cases it was.

Q. Can you give about the difference in rental value in property in block 18 on the east and west sides of the street?

A. There is a considerable difference, I should think about one-third, in favor of the west side.

Q. Was that the fact in 1862 and 1863?

A. Yes; I think the difference was greater then than now—the east side is improving.

Cross-ex'n:

Q. During the years 1862 and 1863, what rate per cent. should real estate on Main st. have brought as rent, to have made a good investment?

A. I should say 15 or 16 per cent.

Q. What rate should it have paid in addition to taxes, insurance, and repairs in those years, to have made it a good investment?

A. I think that would depend on the location and the rise in value of the property.

Q. What did investments in the business part of Racine in those years usually produce in rent; that is, what percentage of the principal invested in addition to taxes, insurance, and repairs?

A. I couldn't answer that of my own knowledge, as I did not own any in those years except one store in the next block north, on

250 the east side of the street. Property did not rent well at that time in Racine, and there were a good many vacant stores.

Q. Was any part of the Howland block ever vacant, from the time it was first rented?

A. To the best of my knowledge & belief, there was not. The room occupied by Booth, I think, was vacant for some time after he moved out. I can't tell whether that was before or after Taylor took it.

JOHN H. PALMETER.

Deposition of B. F. Weeks.

BENJAMIN F. WEEKS, being duly sworn as a witness on the part of the def'ts, deposes & says:

I am 46 years of age. I reside in Racine, and have resided there since the spring of 1862. Have been engaged in mercantile business since I have lived in Racine. I know the property in Racine known as the Howland block. I have occupied one of the stores in that block; I occupied it from the spring of 1862 until August or September, 1865; I rented the store from Isaac Taylor; I rented one store-room and the cellar under it; I rented it for five years, with privilege of leaving any time, on giving three months' notice; I was to pay $300 per annum rent, and put in the shelving & counters, and when I left I was

251 to leave them in. I paid $300 rent per annum while I was there. The expense of the shelving & counters I put in was, I should think, $175 or $200. I kept dry goods and stock' of crockery & groceries. When I left that store I went to the opposite side of the street, nearly opposite the store I left. Since I left the Howland block I have occupied the same store I then took, opposite.

Q. Why did you remove?

A. I thought the other side the best side for business.

Q. What was the fact in that respect?

A. I think it the best side for business still.

Q. What rent have you paid per annum for the store you now occupy since you moved into it?

A. I moved over at $470 rent for the whole building, 1st, 2d, 3d floors & cellar. The 3rd floor was not finished or used. The 2nd floor I used for storing some goods, and as a sleeping-room for clerks. By my lease I had no right to rerent any part of the building. In the winter of 1865 & 1866, when Titus Hall was burned, and offices became scarce, I rented an office in the front part of the 2nd floor, for $100 a year. Some time the next spring or summer my landlord claimed I had broken my lease by renting that office, and I think I paid him the rent I had got to that time for the office; and after that paid $600 a year rent for a year or two. I can't tell whether I had the rent of the office or not. After that year or two elapsed, I paid some of the time
252 $600 rent per annum for the whole building, part of the time $650, and now pay $625.00. I rented the office first to Eldad Smith.

Q. When you went into the store in the Howland block, did you go there to remain & do business as a permanent location?

A. Not if I could do better.

Q. Do better in what way; in point of location?

A. Well, I wanted to get on the other side of the street.

Q. Since 1862, when you came to Racine, what difference would you make in the rent of a store in the Howland block with that of a store equal in size and facilities for business directly opposite?

A. I would pay 33⅓ to 50 per cent. more for a store on the west side for dry-goods trade.

Q. What percentage of difference has there been in the rate of rents on the two sides of Main st.?

A. I should think from 30 to 40 per cent.

Q. State whether that difference has prevailed in other kinds of business than dry goods?

A. I don't think it would be as much in other kinds of business as in dry goods.

Q. Is it not a fact that stores for different kinds of business on the west side of Main st., opposite the block that the Howland building is in have commanded at least one-third higher rents than buildings upon the east side since the year 1862?

253 A. There is not the difference now that there was from 1862 to 1870.

Q. What was the difference from 1862 to 1870, considering all kinds of business?

A. I should say from 25 to 33⅓ per cent. in favor of west side.

Cross-ex'n:

Q. What is the difference in size between the store-room you occupied in the Howland block and the one to which you removed opposite?

A. There is not much difference; the one I am in now may be a little wider—not over two feet wider, if that much; I think the depth is the same.

Q. I understand you occupy the whole building.

A. I sublet the office on 2d floor.

Q. Is that building a good, substantial brick building?

A. It is built in between two other brick buildings, with a brick front

& rear; I do not think it as substantial a building as the Howland block.

Q. Do you know what the occupants north & south of you, along the street, have paid as rent?

A. Not of my personal knowledge.

Q. Do you know what occupants of the stores on the east side of the street have paid for rent since you left the Howland block?

A. I don't know from personal knowledge.

Q. Do you know what they paid during the time you were in the Howland block?

A. I do not of my own knowledge.

254 Redirect ex'n:

Q. On which side of Main st. has business been the most extensively done since you have been in Racine?

A. I should say on the west side; it has the most stores.

Q. Which side of the street is and has been the natural side for business?

A. The west side is the best side.

BENJAMIN F. WEEKS.

Deposition of A. O. Burch.

THURSDAY, *February 5th*, 1874.

ALEXANDER O. BURCH, being duly sworn on part of the defendants, deposes and says:

I am 34 years of age. I reside at Racine, and am in the mercantile business. I knew Isaac Taylor in his life-time. I am acquainted with the property in Racine known as the Howland block. Have known it ever since the building was commenced. I am one of the firm of A. O. Burch & Co. at Racine. Our firm has occupied one of the store-rooms in that building, for business purposes, since October, 1860. We rented the store from Isaac Taylor in 1860. At the commencement we rented the store for one year. The firm then was Booth & Burch. We rented the cellar and first floor of one store. The room had been rented
255 before. It had been vacant some time before we went in it.

Q. What were the circumstances under which you first rented the store from M'r Taylor?

A. We wished the store for business, and that being adjoining to Booth's wholesale grocery, and being vacant, we rented it. We paid $100 rent for the first year. Booth's wholesale grocery remained in the building until he failed, in February, 1861, and the store was occupied a few months after he failed by his assignee. Booth occupied the first, 2nd, & 3rd floors and the cellar of one store.

Q. What rent did you pay for your store after the first year?

A. After the first year the cellar was floored and we paid $300.00 annual rent for 1861 & 1862. For 1863 & 1864 we paid $382.50 annual rent.

Q. How much room in the building did you then have?

A. We had the same as when we commenced.

Q. What rent have you since paid & what rooms have you occupied?

A. We occupied the same rooms with the addition of one up stairs, and paid $425 annual rent.

Q. Before and at the time you went into the building, have you knowledge of any difficulties which M'r Taylor had in renting the room you have occupied?

A. No, sir; I have no knowledge.

Q. Why was the rate of rent for the first year fixed at $100?

256 A. M'r Taylor said that he couldn't get an occupant for it, and that he would rather we would go in at no rent at all than to have it unoccupied, and he said that in order to say it was rented he would call it $100.

Q. Have you had occasion to observe any difference in the extent of business and the rates of rent paid for business property on the two sides of Maint st. in Racine?

A. I have.

Q. State your knowledge upon that subject?

A. The stores on the west side have always rented for a great deal more. At the time I rented that store, I would rather have taken a store on the west side of the street at $600 rent than to take a store on the east side of the street in the Howland block for nothing.

Q. In 1862 & 1863 what difference would you make in the rates of rent in buildings of equal capacity for business on the two sides of the street?

A. Just what I have stated.

Q. Had the post-office been established in the Howland block when you first moved in there?

A. No, sir.

Q. Which side of the street was first built up and on which side was business first established?

A. The west side.

Q. Which has been and is the principal business street in Racine?

A. Main street.

257 Q. Which side of the street and what locality have been the centre of business?

A. From Fourth to Fifth street, on the west side of Main street, in the block opposite the Howland building.

Q. Are there any dry-goods stores on the east side of Main st.?

A. No, sir.

Q. How many are there on the west side?

A. There are four now on the whole street north of 5th street. There are none south of 5th st., unless you call a trimmings store a dry-goods store.

Q. On which side of the street are the clothing & merchant tailors' stores?

A. On the west side.

Q. Up to 1864 and 1865, were there any grocery, hardware, or jewelry stores on the east side of Main street except your own?

A. None except mine and Booth's.

Q. Is it not true that up to 1863, with two or three exceptions, the business establishments on the east side of Main street were small?

A. Yes, sir.

Q. State whether you ever had any conversation with Isaac Taylor about the purchase of the Howland-block property?

A. I had a little: I think it was about a year or a year and a half after we rented of him. I think it was after he foreclosed the mortgage on the property.

258 Q. State the conversation, as near as you are able, and the circumstances under which it was had.

(Objected to as incompetent & immaterial.)

A. I was paying M'r Taylor the rent, and he made this remark: he wanted to know if we didn't want to buy this block from him; and, not

having the means, we replied that there was no use talking about it, & we couldn't think of it. That was all the offer he made to us and all that was said.

Cross-ex'n:

Q. Have you continued to occupy that store since 1865?

A. We have.

Q. At what rent?

A. $425 per annum, including one room up stairs and the cellar.

Q. What rents have been paid since 1860 on the west side of Main st. for stores similar to that you have occupied in the Howland block?

A. They varied; but right opposite, $600.

Q. Who paid $600?

A. The store occupied by Clancey and the one next to him, occupied by Jones.

Q. When did those stores bring that amount?

A. Right along since 1860.

Q. How do you know?

A. By information from the occupants.

Q. Is that all you know about it?

259 A. Yes, sir, that is all.

Q. Did the whole building rent for that, or only the store-rooms on first floor?

A. We were offered the three stories where Jones occupied for $600 at that time. The upper story or third floor was not finished.

Q. Why didn't you take it?

A. Because we had a lease of the other.

Q. If you would have preferred to pay $600 rent on the west side rather than the store you have occupied in the Howland block for nothing, why have you continued to occupy that store at the rent you have paid instead of obtaining a store on the other side of the street?

A. For the reason that we couldn't lease it only for a short time, so that we would have been liable to be turned out any time on 30 days' notice.

Q. Were there not other stores on the west side of the street for rent during this whole period?

A. Not to my knowledge.

Q. Did you ever try to find a store on the west side in view of going to that side of street?

A. We did whenever there was one empty.

Q. How often has that occurred or how often has it been that there has been one empty?

A. I remember no others during that time but the one.

Q. When did Clancey move into the store which he occupied?

A. He moved in after he was burned out in the block below.

260 It was while I occupied the present store.

Q. How long had that been vacant before he moved in?

A. It had been vacant, though rented to a Chicago man who did not occupy it.

Q. Did Clancey occupy the whole building?

A. I know he didn't occupy it all; but don't know whether he rented it all or not. I think the rent he paid was for the store and the office above it.

Q. Do you know M'r Weeks, who testified yesterday?

A. I do.

Q. How long was his store on the west side vacant before he occupied it?

A. I don't know.

Q. Was that as valuable a store as Clancey's & Jones'?

A. Jones' store was the one Weeks occupied. I should say one was just as good as the other.

Q. Haven't the three stores nearly opposite the Howland block, on the corner south, been rebuilt & rerented since 1860? I refer to the property where the Titus block used to stand.

A. Yes, sir.

Q. M'r Weeks said he paid $470 for the whole building where he occupies; is that sum larger than a single store of similar character on the west side would command during the last ten years?

A. No; it is less.

Q. I understand that all you know of rents paid on the west
261 side is from information received from the owners of buildings and occupants.

A. Yes, sir.

Q. Which of the stores in the Howland block do you consider the most valuable?

A. The one we occupy.

Redirect-ex'n:

Q. Was one of the stores in the Howland block occupied as a saloon at one time?

A. Yes, sir; I believe it was.

Q. Have you received information from parties renting buildings and occupying them as to the amount of rents paid for stores on the west side?

A. I have.

Q. State the highest sum paid for a single store on the west side opposite block 18, the one the Howland building is in, between 1863 and 1870?

A. Eight hundred dollars.

Q. Are the 2d & 3d floors of the buildings on the west side, that have been rented with the stores, of any particular value where the lessee has not the right to underlease?

A. They are not.

Recross-ex'n:

Q. Isn't the store that you have referred to as having been rented at $800 a corner store, situated on the corner of 5th & Main streets?

A. Yes, sir.

262 Q. If the lessee had the right to sublet the upper stories, or if his business was sufficiently large to require them for his own business, wouldn't they be of some value to him?

A. They would. That's all.

A. O. BURCH.

Deposition of John Tapley.

JOHN TAPLEY, being duly sworn as a witness on part of the defendants, deposes and says:

My age is 49. I reside in Racine, and my occupation is general agent of J. I. Case & Co. I knew M'r Isaac Taylor in his life-time. I know the property in Racine known as the Howland block, and have known

it ever since it was built. I was postmaster at Racine from April, 1861, to May, 1869. I occupied a room in the Howland block for the post-office. I rented it from M'r Taylor at the commencement of my term of office. The rate of rent was $200 per annum; that included the main store-room on 1st floor and the cellar. I occupied it during the years 1862 and 1863 at $200 rent per annum.

Q. State the circumstances under which you rented the room from M'r Taylor?

263 A. About the time it was known I was to be postmaster, M'r Taylor came to me and wished me to rent a room in his building, stating that he would let me have the rent reasonable in consideration of its being on the unpopular side of the street. I consented to take it. The building at that time was not fully occupied, according to my recollection.

Q. What was the extent of business at that time & during the years 1862 & 1863 on the east side of Main st., compared with business on the west side?

A. There was very little business of a mercantile character on the east side. The banking business was on the east side. The banks were located north of the N.W. corner of the Howland block. The old county bank was on southwest corner of the block, north of the block the Howland building was in.

Q. How did the extent of general business on the two sides of the street compare?

A. I should say there was no comparison, because there was very little mercantile business done on the east side of the street.

Q. How did the rental values of property for business purposes down to 1870 on the two sides of the street compare?

A. I couldn't answer. as I don't know.

Q. To what is the subsequent growth of business on the east side of the street attributable?

A. I should say to the removal of the p. office there.

264 Q. Were you at any time one of the firm of Sandford & Tapley, publishers of a newspaper at Racine and occupants of any part of the Howland block?

A. Yes, sir; we occupied the third floor. We began occupying there about the year 1859, and paid, I think, $200 rent. I don't think the rent was increased during my connection with the firm, which was up to 1863.

Cross-ex'n:

Q. Didn't the fact of establishing the post-office in the Howland block materially change the relative amount of business which had been done on the two sides of the street?

A. Yes, sir; I think it did.

Q. Wasn't the fact of the post-office being established there of material advantage to the block itself, in view of enabling the owner to rent the balance of the building to better advantage?

A. Yes, sir; I think it was.

Q. Isn't it a fact that since the post-office has been established there the balance of the building has been generally occupied by tenants?

A. I can't say just what date the building was fully occupied, but during the latter part of my term of office, I think it was fully occupied.

Q. What part of the building do you recollect to have been vacant after you went there with the post-office?

A. A portion of the third floor was occupied by us without rent during the war until the city council went in, then there was the central rear room of the 2d floor, I think, was not occupied.

JOHN TAPLEY.

265 *Deposition of Henry T. Fuller.*

HENRY T. FULLER, being duly sworn as a witness on the part of the defendants, deposes & says:

I am 49 years of age and reside in Racine, and am attorney at law by profession. Have resided in Racine since 1848, and practiced law during that time. I have had a law-partner during most of that time. The firm-name now is Fuller & Dyer. Before that it was Strong & Fuller. I knew Isaac Taylor in his life-time. The firm of Strong & Fuller was his attorneys in the year 1862 and prior to that time. I commenced doing business for M'r Taylor very soon after I came to Racine, in the summer of 1848, and continued to do business for him, more or less, up to the time of his death. I had to a considerable extent ascertained the value of real estate in Racine prior to 1862, by loaning money on it, foreclosing mortgages, and making sales. The centre of business in 1862, I should say, was on Main st., between 4th & 6th streets. I had always regarded a marked difference and observed a difference in the transaction of business between the east & west sides of the street. Most of the business was done on the west side of the street.

Q. What was the general state of the real-estate market in Racine between 1858 & 1866?

A. It was in a depressed state. There were very few sales, and those that were made were at a very reduced price from what property had been held prior to that time.

266 Q. To what do you attribute the depression in real estate at that time?

A. There was a general depression of business. In Racine it was seriously felt in 1857. The public enterprises suffered materially from the general depression of business and the scarcity of money. The mercantile business was depressed, and mercantile and manufacturing business to a considerable extent. Business men had borrowed a large amount of money, which was being called in by parties loaning the same, and many forced sales were made during that time on foreclosures and executions. Those were the general causes of the depression. The city indebtedness had a material effect on property. The city was indebted to a large amount, which was regarded a great burden.

Q. Was your firm retained to foreclose any mortgages on business property on Main st. during those years?

A. Yes, sir.

Q. Name some of the business houses that changed hands on foreclosure sales between 1858 and 1866.

A. The property known as the Durand property on the cor. of Main & 3rd st's, consisting of two brick buildings, one occupied by the Commercial Bank of Racine, known as the Commercial Bank Building, and the other occupied by the R. R. co. for offices. I foreclosed a mortgage on a lot on the east side of Main st. between 2d & 3d st's, known

267 as the Fallows property; I won't be sure as to the name. I foreclosed a mortgage on a piece of property opposite that or nearly so, known as the Raymond property. I foreclosed a mortgage upon what is known as the Howland building on east side of Main st. in favor of Isaac Taylor. I foreclosed a mortgage on a piece of property

on the east side of Main st. on the corner of 3rd st., known as the Griswold property. I foreclosed a mortgage on what is known as the McClurg building, opposite the Griswold property, but this property did not go to sale. I foreclosed a mortgage on what is known as the Baker House property, on east side of Main st. just south of the Howland property. I think I foreclosed a mortgage on the corner lot on 5th & Main st's.

Q. Were those mortgages given for money borrowed on the property?

A. They were, most of them.

Q. What success did you have in finding purchasers at the foreclosure sales?

A. I did not seek purchasers.

Q. Were the usual advertisements made?

A. They were; the mortgage's or the owners of the mortgage usually became the purchasers at the foreclosure sales.

Q. State whether or not it was difficult to sell real estate during the years between 1858 and 1866 for what it cost to erect the buildings?

268 A. I can state my own experience. Our firm, Strong and Fuller, at that time became the purchasers for their clients, and in many instances sought to make sales and used more than ordinary exertions to make sales at the request of our clients, and found it very difficult to sell the property purchased at the foreclosure sales, and in some instances we sold for less than one-half of the value of the property as regarded in 1856 and early in 1857, perhaps. I can name the Baker House as one piece of property. The building cost, I think, nearly double what we got for it. We were unable to rent it at any reasonable percentage. It was in the market for sale for several years. The Durand property was in like condition, and sold for a very low price. The McClurg property also. It was a very expensive building. If I have stated that it was sold on foreclosure decree, I correct myself by saying it was not sold on the decree.

(Witness is here shown an original record from the Racine circuit court.)

Q. Is that the original record of the foreclosure of the mortgage of Eugene Howland to Isaac Taylor on the Howland property?

A. Yes, sir; I think it is.

Q. Do you know Eugene Howland, the compl't?

A. I think I did, but think I should not know him by sight now.

Q. Do you know R. W. Howland?

A. Yes, sir.

269 Q. Were you pretty well acquainted with M'r Taylor's business?

A. I think our firm did a very large majority of his law business, and I myself did a very large part of his business, and was his confidential legal adviser.

Q. During the time that mortgage was being foreclosed, did you know or learn from any person that there was any agreement between M'r Taylor & Eugene Howland whereby Howland was to retain an interest in the property, or to have the property when the rents would pay it, or on the happening of any other contingency?

(Objected as incompetent, immaterial, & improper.)

A. No, sir.

Q. Did you learn any fact which led you to believe it was not an absolute foreclosure of the mortgage?

(Objected to for same reason as above.)

A. No. I had no intimation of the kind, & had no knowledge of any agreement or understanding of the kind. On the contrary, M'r Taylor urged me to prosecute the foreclosure, for the purpose of protecting his interests. I communicated the fact to M'r Taylor that we were perfecting a lien on the property for material furnished. He became anxious concerning the lien, being a prior lien to his mortgage, and urged prosecution.

(Witness is shown a record of Wiltse & Hetrich vs. Howland, in Racine circuit court.)

Q. Is that the record of the mechanics' lien?

A. Yes, sir.

270 Q. Were you present at the sale that took place on the Howland foreclosure?

A. I think I was.

Q. Can you state what the property sold for?

A. By reference to the record it was sold for $9,300.00.

Q. How did that sum compare with the market-value of the property at that time?

A. My impression is the property could not have been sold for that at that time. My memory is that, under instructions from M'r Taylor, I bid off the property at the sale in his name. I had frequent conversations with M'r Taylor on the subject, and we agreed that it was not ample security for the liens upon it. I sold the Baker House to M'r Huggins; that is, I made the bargain with him for my client.

Adjourned to Monday, June 1st, 1874.

MONDAY, *June 1st*, 1874.

Present, same parties & witness before mentioned.

Examination resumed by def'ts' counsel.

Q. Prior to the time of the sale of the Baker House property to M'r Huggins, and while it was under your charge, what difficulties, if any, did you have in renting the property, particularly the hotel part, at remunerative rates?

A. I could not rent it all at remunerative rates. Part of the time it was rented to M'r's Dustin & family, so that it should be occu-

271 pied. She paid a mere nominal rent. I can't state the amount she paid, but my impression is we realized for the year $160. I think a man by the name of Dana occupied it one year, prior to M'r's Dustin, at the rent of $300, I think it was, and he found great fault, because he could not get custom enough to pay the rent. I exerted myself to rent the building, but was unable to find tenants at better rates.

Q. From 1860 to 1865 inclusive, was there not a considerable amount of business property in Racine which would not sell in the market for what it cost?

A. Yes, sir.

Q. What were M'r Isaac Taylor's habits of business as to care, caution, and exactness in transacting business? State generally his character in the particulars referred to, and his habits in the matter of making agreements, particularly as to whether it was his habit to make verbal agreements or to have them reduced to writing?

(Objected to as incompetent & immaterial.)

A. He was very cautious, as every one knows; scrutinizing every transaction in business thoroughly himself, whether the business was transacted by himself or by others for him. When transacted by him-

self it was frequent he would come into the office and ask the legal bearing of propositions, before closing the transaction. He seldom, if ever, entered into a contract hastily; always took care to be well understood in the terms of a contract; and in all the business that I transacted for him it was seldom any misunderstanding occurred between him and the party contracting or doing business with him. In all matters of time his general habit was to reduce business transactions to writing. In matters to be accomplished immediately, that is within a few days, he would often require a memorandum in writing. I never knew him to make a verbal contract concerning real estate, where it involved time, except in some leases for a short time.

272

Q. Do you know what was M'r Taylor's habit as to keeping a D'r & C'r a/c with all property which he owned to show his gain or loss on each item of property while he owned it? If so, please state his habit in that particular.

(Objected to as incompetent & immaterial, because his books are already in evidence.)

A. I know his habit, or what his habit was, to a considerable extent. In many instances where he was interested in real estate he would keep a C'r and D'r account with that particular piece of real estate, showing the expenditures & receipts. It was so with mortgages in very many instances which he would take for moneys loaned. It was so in his lumber business, keeping an account, D'r & C'r, with the mills where the lumber was manufactured separate from the yards at Racine and other places, and a separate account for each yard at which sales were made.

273

Q. Do you remember, or have you knowledge, of a mortgage which M'r Taylor had upon the property of a M'r's Wright, at Racine, the property being, I think, the old Bank of Racine building?

A. I have knowledge of it.

Q. Did M'r Taylor at any time take or have possession of that property under his mortgage? Please state the circumstances relative to it within your knowledge.

(Objected to as incompetent & immaterial.)

A. My memory is that the property was given by M'r Wright in his lifetime & before he went to California. It was reported that he was killed by the Indians on his way. I attended to the settlement of the estate as the attorney for the widow, and advised M'r's Wright to keep the property, if possible. I also had a conference with M'r Taylor about his mortgage, having acted for him as his attorney in taking it, whereupon some agreement, the terms of which I do not now remember, was made between M'r's Wright and M'r Taylor, whereby the time for payment of the mortgage was extended, and whether he took possession of the property under the mortgage or managed the property for M'rs Wright I am not sure; I think he took the management of the property for her, or for the estate.

Cross-ex'n:

Q. In the suit of Wiltsey & Hetrich vs. Howland, which you have mentioned, was there a sheriff's sale of the property?

A. I think there was.

274

Q. In whose name was the property bid off?

A. I think in the name of Daniel P. Rhodes.

Q. Who was Daniel P. Rhodes, and where did he live, and how was he related to Isaac Taylor?

A. He was a business man; living, I think, in Cleveland, Ohio; in no wise related to M'r Taylor that I know off; never heard that he was.

Q. Were they not intimate personal friends?

A. They were.

Q. Was he not one of the executors in M'r's Isaac Taylor's will?

A. He was.

Q. When did M'r's Taylor die?

A. I think in the year of 1866; in the fall or early in the winter.

Q. When did Isaac Taylor die?

A. Either in 1864 or 1865, I think.

Q. Was M'r Rhodes present at the sheriff's sale in the Wiltsey & Hetrich case?

A. He was not.

Q. Did he have any agent there representing him?

A. My memory is that I bid off the property in his name. I think M'r Taylor paid me the purchase-money in the office or settled it with Wiltsey and Hetrich at or about the time of the sale. I saw instructions giving me either authority or permission to bid it off in M'r Rhodes' name.

275 Q. You have spoken of the business habits of M'r Taylor in reference to making agreements; was he not, in fact, always scrupulously honest in carrying out his agreements, whether in writing or verbal?

A. He was.

HENRY T. FULLER.

276 *Deposition of Warren J. Durham.*

THURSDAY, *February 5th*, 1874.

Present same counsel before mentioned.

WARREN J. DURHAM, being duly sworn as a witness on part of defendants, deposes & says:

I am something over 39 years of age. My present residence is Des Plaines, Cook County, Ill., and am a practicing attorney at Chicago, Ill's. In the years 1860, 1861, 1862, and 1863, my residence was at Racine, Wis. I was engaged then with Strong & Fuller in the practice of law. I knew Isaac Taylor & R. W. Howland, but now have no recollection of seeing Eugene Howland, though it is barely possible I may have done so. I have examined the record in the foreclosure of the mortgage shown M'r Fuller, in favor of M'r Isaac Taylor against Eugene Howland; some of the papers are in my handwriting, and in addition I will say that most of the other papers were got up under my supervision, being copied from rough drafts furnished by me to other clerks in the office. I had knowledge of the foreclosure while it was taking place; I see by the record that R. W. Howland was examined as a witness in that case.

Q. Did you have any knowledge or information that the foreclosure of this mortgage was not an absolute & unconditional foreclosure in the ordinary form?

(Objected to as incompetent, immaterial, & improper.)

A. I had no knowledge or information of the kind.

277 Q. Do you recollect conversations between M'r Taylor & Strong & Fuller, or between M'r Taylor and yourself, relative to the foreclosure of this mortgage?

(Objected to same as before.)

A. I do not at this time recollect any conversations between Strong & Fuller & M'r Taylor on the subject in question, nor any conversations between M'r Taylor and myself beyond the fact that I took his testimony as to payments on the mortgage, and had some conversation with him on that subject, the detail of which I do not now recollect.

Q. Did you ever at any time receive from M'r Taylor any knowledge or intimation, either before, during, or after the foreclosure of the mortgage, that Eugene Howland was to have or retain any interest in the property foreclosed, upon the happening of any contingency?

(Objected to same as above.)

A. I hav'n't the slightest recollection of anything of the kind. I think I can safely say I never had such knowledge or intimation.

Q. While you were in Strong & Fuller's office did you become familiarly acquainted with Isaac Taylor?

(Objected to same as above.)

A. Yes, sir; I became quite well acquainted with him during that time, which was from the spring of 1859 until the last of April, 1864.

Q. Did you draw the deed of the Howland property from Isaac Taylor & wife to Lucius S. Blake & James T. Elliott, dated April 18, 1863, & now shown you?

278 A. Yes, sir; I drew it.

Q. Did you also draw the notes for the purchase-money made by L. S. Blake & James T. Elliott to Isaac Taylor, now shown you?

A. Yes, sir; I drew those notes.

Q. Can you now remember at whose instance you drew those papers?

A. If my recollection serves me rightly, both M'r Blake & M'r Taylor called concerning the business; I am not sure whether M'r Elliott called or not.

Q. Was the deed acknowledged before you?

A. Yes, sir.

Q. At the time you drew the deed and notes, or at the time they were executed, did you have or receive any knowledge or intimation that the sale & conveyance were not absolute and unconditional?

A. I did not.

Q. In 1861, 1862, 1863, and 1864, had you knowledge of the demand for real estate, for business purposes, in Racine, and the condition of the real-estate market there; if so, what was it?

A. I confine my answer to the period ending the last of April, 1864, when I left Racine. Up to that time I had such knowledge. The real-estate market was extremely dull, especially for business property, and in the years 1861 and 1862.

W. J. DURHAM.

279 *Deposition of Tho's. J. Emerson.*

THOMAS J. EMERSON, being duly sworn as a witness on part of the defendants, deposes and says:

I am 58 years of age; I reside in Racine; my occupation up to 1856 was practicing law in Racine; I had a partner by the name of Marshall. I dealt in real estate to a considerable extent in Racine, commenced at it in 1845 or 1846, dabbling in it both for myself and for others; was dealing in it up to about the year 1865.

Q. What was the condition of the real-estate market in Racine from 1857 & '58 to 1865?

A. After the panic in the fall of 1857 there was a general depression all over the country, and by a combination of circumstances in Racine

it was extremely depressed. In 1858 the city of Racine failed to pay the interest on her bonded indebtedness. The first tax levied to pay R. Road bond indebtedness was not paid but in a very few instances. That, followed up by the failure of the railroad extension, and the liability of the city to pay the bonds, caused a general depression in real estate, so that there was little or no sale for it. I think the records will show very few sales of real estate in Racine, except forced sales, up to 1864. In that year I made the first sale I was able to make in four years of property that was before that time and is now valuable.

Q. Do you know the Howland block?

A. Yes, sir.

280 Q. What was the fair market-value of that property in June, 1862, and April, 1863?

A. That is impossible for me to say. I can only tell you my impression of the sale to Blake & Elliott of the Howland block at the time. It was one of the first sales of any note after the panic of 1857, and I thought it a remarkable sale; & it was generally thought a remarkably successful sale for M'r Taylor to make. It was the general talk that the post-office being there, and the building being pretty well rented, gave value to the building.

Q. Was that regarded the full market-value of the property at that time; that is to say, the $10,000?

A. It is a great deal more than I should want to have given for it.

Q. Do you think it could have been sold for more in the market?

A. I considered it then, and do now, a chance sale. I think it sold high; and, if the property had been mine, I don't think I could have got as much out of it as M'r Taylor.

Q. Which has been, and is now, the best side of the street for business purposes?

A. The west side.

Q. Which has produced the highest rents for the same quality of buildings?

A. I don't know as I can give the difference in the rent between the east side & the west side.

281 Q. Did you know of business property remaining vacant on Main st. during 1862, 1863, & 1864?

A. In the fall of 1862 I was appointed collector of internal revenue, and went to look up an office, and in the Durand block there was only one tenant in the corner store. The second & third buildings from the corner were all empty. I think the Union block was all empty, but one store occupied. Part of the Baker House was unoccupied. The Commercial Bank building I rented for $100.00 a year—for the first floor, a front & rear room.

Q. Were you intimately acquainted with M'r Taylor?

A. Yes, sir; I was quite so.

Q. Did you ever hear him say anything about the sale of the property in question to Blake & Elliott?

(Objected to as incompetent & immaterial.)

A. Not particularly about the sale; but about getting his money out of it, and the rentals. His idea was to get the post-office there, and the city council, and generally, through them, to fill up the building and get it rented. He said when it was rented he would get his money back, so that he would not lose anything. He thought, at one time, he was going to lose considerable money there. After the sale, in a conversation with me, he spoke quite exultingly that he had accomplished his end, and respecting the sale to Blake & Elliott, and the respons-

ibility of the parties, he was as well satisfied as though he had his money.

282 Cross-ex'n:

Q. You have been asked about the market-value of real estate in Racine in 1862 and 1863. What fixed the market-value of real estate there at that time?

A. I can't say that there was any market-value at that time. We couldn't sell property.

Q. Isn't it a fact that there wasn't any market-value to real estate there at that time?

A. I don't think there was any market-value; property wasn't changing hands; we couldn't sell it.

Q. You said that when the sale was made to Blake & Elliott it was thought a successful sale, and that was the talk. Who did you hear express that opinion?

A. In conversation with M'r Taylor & M'r Strong, and that class of men who had any real estate to sell.

Q. Was the conversation with M'r Taylor the one you have alluded to?

A. Yes, sir.

Q. Who else did you hear speak of it at that time?

A. I don't know who; can't specify any names.

Q. What Strong do you refer to?

A. Marshall M. Strong. He is dead now.

Q. During the years 1862 and 1863 what rate per cent. should real estate on Main st. have brought as rent to have made a good investment?

A. 15 per cent., I think, would be fair.

Q. What rates should it have paid in addition to taxes, insur-
283 ance, & repairs, in those years, to have made it a good investment?

A. I don't know about those years; but real estate that pays ten per cent. over and above taxes, insurance, & repairs is considered very fair property.

Q. You spoke of buildings being vacant on Main st., in the fall of 1862. Where were they located?

A. I think the most of them, or best of them, were between 2d & 3d streets.

Q. You spoke of the Baker House being vacant. When and how long was it vacant?

A. I can't specify the time. It was vacant some time after it was sold at public sale.

Redirect ex'n:

I wish to say that in the conversation with M'r Strong he said, speaking of the sale to Blake & Elliott, that no other man but M'r Taylor could have filled the building up and sold it as he did but M'r Taylor.

THOMAS J. EMERSON.

Deposition of Hermon Warner.

FRIDAY, *February* 6, 1874.

Present same parties before mentioned.

HERMON WARNER, being duly sworn as a witness on part of defendants, deposes and says:

I am 60 years of age, and reside at Racine. By occupation am run.

ning a tannery now. Have resided at Racine since the fall of
284 1854. During my residence there I have been engaged some of the time in selling, renting, and dealing in real estate. From 1855 to 1860, and from 1863 to within the last three years, I was so engaged.

Q. What demand was there for real estate, and what was the condition of the real-estate market in Racine, from the year 1858 to the year 1867?

A. Part of the year 1858 sales were very good; from 1859 for six or seven years it was very poor.

Q. During the years that you have referred to, how did the selling-price or value of business property in Racine compare with the cost of the same?

A. Property would not sell in many instances for more than one-third or one-half its cost, from 1859 to 1864, or 1865.

Q. During any of those years did you have any transactions in real estate on Main st. in Racine?

A. Very few sales made; I don't think I made any except one of my own property.

Q. Were there any causes for the depressed state of the real-estate market in Racine during those years, which were peculiar to that locality? If so, state them.

A. I think the panic at that time and the war, tightness in the money-market, &c.; I know it was almost impossible to borrow money.

Q. Did the city indebtedness affect it, and rate of taxation?

A. It might in a measure.

Q. Do you know the property in Racine known as the Howland block?

285 A. I do.

Q. During the years that you were engaged in the real-estate business, state whether you made purchases or sales of business property near the Howland block, and north of it.

A. I bought a building & ground 20 feet north of it; that was in 1865 or 1866, I think.

Q. You have stated that for 2 or 3 years you were not in the real-estate business—in 1861, 1862, and 1863; why did you discontinue that business during those years?

A. For the want of business; there being no sales of any account.

Q. What, in your opinion, was the fair market-value of the Howland block property in June, 1862, & April, 1863?

A. There was no market-value hardly to any property during that time, excepting to sell for what you could get.

Q. What would be an equivalent in money for that property, during those times?

A. I should think $10,000 all a man could sell it for at that time.

Q. During those years and subsequently, where was and has been the central point for business in Racine?

A. The central point is that block, and the opposite on Main st. between 5th & 4th streets.

Q. On which side of the street was business in those years most extensively done?

A. On the west side.

Q. What has been the fact since 1863?

A. The west side is considered the best; property rents higher there.

286 Q. From your observation and experience, what difference

would you make in the rate of rent on the two sides of the street for property of the same class?

A. I think there is the difference of from 150 to 250 dollars a year.

Q. How was it in 1862 and 1863?

A. I think there was more difference then.

Q. State generally the character of the business done on the two sides of the street between 5th street & 3rd street, in 1862 and 1863.

A. The principal retail business was on the west side of the street—of dry-goods, hardware, & druggists' stores; boots and shoes, jewelry, and clothing stores were mostly on that side. The majority of grocery & provision stores were on west side. On the east side there were small business saloons, the banks, & a paint store.

Q. How far were the banks from the Howland block, & where were they situated?

A. One was on the N. W. corner of same block, the other was on the opposite corner, on the same side of the street.

Q. Is it not true that in those years the east side of the street was mainly occupied by small dealers, who had small shops and establishments for their business between 3rd st. & 5th st.?

A. It was so occupied.

Cross-ex'n:

287 Q. You said there was no market-value for real estate in Racine from 1859 to 1864, or 1865; what was it that fixed the value of improved business property in Racine during that period?

A. I can't say there was anything.

Q. Why do you say then that $10,000 is all a man could have got for the Howland block?

A. There was no property sold except on foreclosure or at forced sales.

Q. Is the price which property bought on foreclosure or forced sale at that time the basis on which you make that estimate?

A. It is.

Q. And when you said that the selling price was not more than one-third or half the cost, you had reference to the same basis?

A. Yes, sir.

Q. You said that during that period property rented higher on the west side than on the east side of Main st.; do you know what the Howland block produced in rent at that time?

A. No, sir.

Q. Do you know what property of a similar character produced on the west side?

A. My impression is that stores rent for from five to six hundred dollars.

Q. What stores rented for that price during that time?

A. I think M'r Elkins' did; am not certain what rent he did pay, but think he paid about $500, from information.

288 Q. You said the small business was transacted on the east side; was that particularly so in the block in which the Howland property was?

A. I think it was principally, with one or two exceptions.

Q. Was not one of the banks in that block?

A. Yes, sir.

Q. Wasn't the Baker House in that block?

A. Yes, sir; a portion of the time; it was not occupied much.

Q. Wasn't the post-office in that block?

A. It was.

Q. Wasn't the Howland block with its stores & offices in that block; and were not those stores & offices continually occupied by tenants?

A. I think they were, principally.

Q. Were there other stores or places of business of importance in that block?

A. There was a harness-shop, & I don't recollect of any others.

Q. Didn't Langlois & Robilliard do about the heaviest business in the city when they were located in that block?

A. In their line of business I think they did.

Q. You spoke of being absent from Racine from 1860 to 1863; what business were you engaged in during that time & where?

A. I was in Milwaukee, selling goods.

Redirect ex'n:

Q. Were not Langlois & Robilliard, at the time spoken of, the only extensive dealers in the class of business in which they were engaged in Racine?

A. They were.

289 Q. From 1860 to 1862, did your family reside in Racine?

A. Part of the time there, and part here. While doing business in Milwaukee, was frequently in Racine, & had real estate for sale there.

Q. Was not one of the stores in the Howland block used as a billiard-saloon during 1861, 1862, & 1863, or a portion of the time?

A. I think it was, but don't know what portion.

Q. During 1862 and 1863, did you know any business property in Racine sold proportionately higher than the Howland block was sold?

A. I did not.

Recross-ex'n:

Q. During the years 1862 and 1863, did you know of any other business property being sold there, except on forced sale or foreclosure sale?

A. I did not.

HERMON WARNER.

Deposition of George Bull.

GEORGE BULL, being duly sworn as a witness on part of the defendants, deposes and says:

I am 54 years old. I reside in Racine, and have resided there 31 years. I have been selling goods most of the time, and am now. I don't know Eugene Howland, the complainant in this suit. I know Blake & Elliot, the defendants. I was well acquainted with

290 Isaac Taylor in his life-time. I know the block in which the post office is situated.

Q. What was the condition of real estate in Racine from 1859 to 1863?

A. I believe it was regarded by those who owned real estate, that it was not a good investment. I owned some, and that was my opinion regarding it.

Q. How was the Howland block situated as to the then centre of trade & business?

A. I don't think the east side of Main st. has ever been regarded as good for merchants as the west side.

Q. How did the two sides compare, at that time, for business purposes?

A. At that time I was doing business myself on 6th st., and I can only answer the question by the rent I was paying, and what I was offered a store for down street. We were paying, I believe, $150 for the store on corner of 6th & Wisconsin st's, it may not be over $100, and M'r Taylor, at that time, who claimed to have the rental of the Howland stores, came to me & said if we would go & take one of the stores in that block we might have the rent free. I think it was some time during the year 1861. I did not accept of that offer, because the property on that side of Main st. was regarded as out of the way for the business we were carrying on.

Q. What business were you engaged in?

A. We were selling merchandise, dry-goods & groceries.

291 Q. Was there a demand for business property on Main st. for purposes of investment during the years 1862 & 1863?

A. No, sir; I don't think there was.

Q. Did you have means of knowing what property was worth in the market at Racine at that time?

A. I remember that I purchased some property about that time, myself. That was on cor. of Wisconsin & 5th st's.

Q. What was the size of the lot?

A. It contained three houses on Wisconsin st., and three on 5th st. I believe I made two payments on the property, one down & one afterward.

Q. How large were the payments?

A. I paid $1,500 on the property, I think. It was sold on a foreclosure afterwards.

Q. For what amount was it sold on foreclosure?

(Objected to as incompetent & immaterial.)

A. I don't remember the exact amount. It is my opinion the debt was in the neighborhood of $4,000, and I think the property brought less than $3,000, leaving a judgment against me for deficiency of about $1,500, which I afterwards paid up.

Q. What is the fair value of that property now?

(Objected to, same as above.)

A. I can't answer that very well. I have too poor an opinion of the property.

Q. Was there a great falling off in the value of real estate in Racine after 1857?

A. There was quite a decline in value and in rents in those years.

292 Q. Could you give a statement as to the value of the Howland block in 1862 and 1863?

A. I don't think I could.

Cross-ex'n:

Q. Had the post-office been removed to the Howland block at the time M'r Taylor proposed to give you rent free there?

A. It had not.

Q. How long did he propose to let you have one of those stores rent free?

A. No time was mentioned.

Q. Did you understand it was to be a perpetual lease?

A. No, sir.

Q. What idea did you have?

A. I supposed it would have been for not less than a year; but nothing was said about it.

Q. When was it you purchased this property on the corner of 5th & Wisconsin st's?

A. I think it must have been in 1857, or near that date. The foreclosure sale took place at least three years after the purchase. The owner of the mortgage bid in the property on the sale.

Q. Where was the business centre of Racine in 1862 and 1863?

A. For merchandising it was on the west side of Main st., between 4th & 6th st's, and on 6th st., between Main st. and College avenue.

293 Q. Didn't the value of business property on the two sides of Main st., in 1862 and 1863, depend very much on the rents which could be procured for the property?

A. I think not.

Q. What did its value depend upon?

A. Upon its location for retail business.

Q. Wouldn't the amount of rent which was paid for improved business property on the two sides of Main st., in 1862 and 1863, determine the character of its location as business property?

A. It would not, in my opinion.

Q. Wouldn't it be a circumstance to indicate the character of the location as a business point?

A. No, sir; not in my opinion.

Q. Wouldn't the value of an investment in improved business property on Main st. depend somewhat on the permanent income that it would produce?

A. I think it would.

Q. How much would it?

A. It would depend somewhat upon the kind of property. There were some kinds of business that would pay as good investment on the east side as on the west side.

Q. What amount per cent. of annual income as rent should improved business property have produced in 1862 and 1863, to have made it a good investment, on Main st., in Racine?

A. I can't answer the question, because property on one side of the street would have to increase more than on the opposite side.

294 Q. During the years 1862 and 1863, what rate per cent. should real estate on the west side of Main st. have brought to have made it a good investment?

A. At least 10 per cent.

Q. During the years 1862 and 1863, what rate per cent. should real estate on the east side of Main st. have brought to have made it a good investment?

A. As I understand it, it would not make any difference as to side of street.

Redirect ex'n:

Q. Would not the percentage of income realized from business property on Main st. that should be required to make an investment in such property profitable depend upon its location, facilities, and conveniences for business, character of structure, durability, and future prospect for business, and prospective rise in value?

A. A portion of it would and a portion would not. I think all would except the location.

Q. In fixing ten per cent. as a rate per cent. for good investment, do you mean that rate exclusive of taxes, insurance, necessary repairs, & natural wear & tear?

A. Except natural wear & tear, I do. I mean it should realize ten per cent. above taxes, insurance, & repairs.

Recross-ex'n:

Q. How much should it realize, independent of the question of taxes, insurance, & repairs, to make it a good investment on Main st., in Racine?

295 A. I should think not much difference; from 20 to 25 per cent. on the gross earnings of the property.

Redirect ex'n:

Q. What do you mean by 20 to 25 per cent. on the gross earnings of the property?

A. I mean there would be 20 to 25 per cent. difference in the rents; that there should be that much added to the rents for taxes, insurance, &c.

Recross-ex'n:

Q. Then what rate per cent. of gross income should have been received as rent, during the years 1862 & 1863, on Main st. to have made a good investment?

A. I should think somewhere in the neighborhood of 13 to 14 per cent.

GEO. BULL.

Deposition of F. W. Bruce.

FREDERICK W. BRUCE, being duly sworn as a witness on part of defendants, deposes & says:

I am 40 years of age. I reside in Racine, and by occupation am a merchant. I am one of the firm of A. O. Burch & Co., the occupants of one of the stores in the Howland block. I knew Isaac Taylor in his lifetime. We first rented the store from him.

Q. State whether at any time before the purchase of that prop-
296 erty by Blake & Elliott M'r Taylor offered or proposed to you or your firm that you buy the property.

A. He metioned the matter once in our store and said he thought it would be a good thing for us to buy the property. He rather advised us to buy it, but I cannot state what the conversation was. He offered to sell it to us if we would buy it.

Q. In 1862 and 1863, which was the most desirable side of Main st. for business purposes?

A. For almost all kinds of business the west side was the most desirable.

Q. How has it been since 1862 & 1863?

A. For some kinds of business the east is as good as the west, but I do not consider it as good for our business.

Q. For what kinds of business was and is it as good on the east side?

A. For the paint and oil trade, wall & window paper, and that class of business, I consider it as good as the west side. 'Tis just as good for a restaurant or billiard-hall.

Q. Considering location and facilities for business, what difference would you have made in 1862 & 1863 between the east & west sides of the street?

A. For our business at that time I believe we paid $300 a year rent, or for a portion of that time. If I could have got a store equally as good on the other side of the street in that block for about the same rent, I should have taken it, if I had been offered the one where we now are for nothing.

297 Q. What was the difference in your opinion for dealers in dry-goods, clothing, drugs, boots & shoes, & hardware in those years?

A. I think the west side would have been worth double the rent for those particular kinds of business. I mean double on the basis of the rate we paid for stores equally as good as ours at that time.

Q. Has there or not, since you have been in business in Racine, been a marked difference in the two sides of the street, in the extent & character of the business done?

A. There has.

Cross-ex'n:

Q. Hasn't there frequently been vacant stores on the west side of the street since you have occupied a store in the Howland block?

A. I think there were two stores vacant for a short time, but think they were engaged all the time they were vacant.

Q. Hasn't the Titus block been rebuilt and rerented since you have occupied the Howland block?

A. It has been rebuilt, but the stores were all rented before the stores were completed.

Q. Has there been so great a demand for business property in Racine since 1860, and have the stores on the west side of Main st. been so continuously occupied during that period that you have been unable to secure a store on the west side of the street by paying double the rent you were paying the Howland block?

298 A. I think the class of stores there about such as we occupy have been continuously occupied on the west side of the street, with the exception of the time I spoke of in my former answer. In speaking of the west side of Main st. I mean the block just opposite the Howland block. There have been stores which we could have got there, but they were too small and inconvenient for our purpose.

Q. Couldn't you have got a store on 6th st. between Wisconsin & Main st's?

A. Yes, we could; but didn't go there for the reason that I preferred to stay where I was.

Q. You have named some kinds of business that could be carried on to as good or better advantage on the east side; which is the best side for banking business?

A. I think the west side is.

Q. Hav'n't there been two banks on the east side?

A. Yes, sir.

Q. Which has been the best side for law-offices, &c.?

A. I don't know there is any difference for law-offices. There are just as good on one side as the other.

Q. On which side have the printing-offices been?

A. One is over our store, and there are two others in the same block.

Q. Hav'n't the stores and offices in the Howland block been continuously occupied since it was first built?

A. I think they have with some little exception.

Q. What store or office has been vacant at any time since April, 1863?

299 A. I don't know of any store. I think for a portion of the time one office has been vacant that is now occupied. I think the office occupied by Bennet & Ullmann was vacant for a time after they left it; I couldn't say how long.

Q. When was it that M'r Taylor spoke to you about buying this prop-

y l

A. Prior to the time he sold it to Blake & Elliott; I don't know how long prior. It was in our store. I don't know that any one was present but M'r Taylor, M'r Burch, & myself. The conversation was between all three of us.

Q. How did he happen to be in the store?

A. He came in often in the evenings and would sit down and give us young men the benefit of his counsel & advice, & would come in also to collect his rents. I can't tell what he did come in for that evening.

Q. How did the conversation about selling the property commence?

A. I couldn't state; don't recollect.

Q. What did he say about it?

A. I don't recollect any particular language he did use.

Q. What is the substance of what he said?

A. It was offering to sell, and I think rather advising us to buy.

Q. What reply did you or M'r Burch make?

A. I don't recollect exactly. We had no money to invest in that way, and could not entertain any proposition of the kind.

300 Q. Wasn't he aware of the fact that you hadn't money to invest in that way?

A. He was. The proposition did not result in any negotiations.

Q. What rent are you paying now for your store in the Howland block?

A. $425, including the room over the rear, which is about half the size of the store. It is connected with the store by a flight of stairs.

Q. How long have you been paying $425?

A. Since 1865—April, 1865.

Redirect ex'n:

Q. Has one of the banks moved from the east to the west side of Main st.?

A. It has; it was last summer.

Q. Suppose the post-office should be removed from the Howland block, and away from the block, between 4th & 5th st's, how would it affect rents in the Howland block, in your opinion?

(Objected to.)

A. I don't think the rents would be worth as much with the post-office removed. If the post-office had been removed in 1864 or 1865, in my opinion it would have hurt the rents more than if the removal was made now.

F. W. BRUCE.

301 *Deposition of James T. Elliott.*

FRIDAY, *February 6th*, 1874.

Present, same parties before mentioned.

JAMES T. ELLIOTT, being duly sworn as a witness for defendants, deposes and says:

I am 48 years of age. I reside in Racine. Am in the manufacturing business. Moved to Racine first in 1839, but was absent about ten years; returned there in 1858, and have lived there ever since. I knew Isaac Taylor. I did not know Eugene Howland, the complainant. I know Richmond W. Howland; have known him since 1859 or 1860. I am one of the defendants in this suit. I was to some extent acquainted with the value of real estate in Racine during the years 1862 and 1863.

Q. Did Lucius S. Blake & yourself purchase from Isaac Taylor the property known as the Howland block?

A. Yes, sir. We made the purchase in April, 1863.

Q. Where was the contract made for the purchase of the Howland block?

A. In the shop of Blake & Elliott.

Q. Who was present during the negotiations?

A. M'r Taylor, M'r Blake, myself, & M'r Charles Bunce.

Q. Had you had any talk about the purchase of the property with M'r Taylor prior to that time?

A. No, sir.

Q. Had the subject been talked between M'r Blake & yourself prior to that time?

A. Yes, sir.

302 Q. State now what occurred between M'r Blake, M'r Taylor, & yourself relative to the purchase?

A. M'r Taylor asked us if we would buy the property. He gave us his price; what he wanted for it, and the terms of payment, & we concluded to take it.

Q. What price did he ask for the property?

A. Ten thousand dollars.

Q. What were the terms of payment?

A. $2,500 down; $750 to be paid every six months, with interest at 7 per cent.

Q. After you concluded to take the property, what did you do then?

A. There was very little more said about the matter, although I asked him if the title was perfect, and he said it was.

Q. Did he or not furnish you with an abstract of title of the property?

A. Yes, sir; he did.

Q. When were the papers drawn?

A. The following day.

Q. Where were they drawn?

A. In Strong & Fuller's office.

(Witness is here shown a paper.)

Q. Is this paper the deed from Isaac Taylor?

A. It is.

Q. Who drew the deed or filled it out?

A. M'r Durham, who was examined yesterday as a witness.

Q. Was M'r Taylor present at the time?

303 A. Yes, sir.

Q. Are the ten promissory notes now shown you the ones executed by you and delivered to M'r Taylor?

A. They are; and have all been paid by us.

Q. How were those notes secured?

A. By mortgage on the property bought.

Q. What sum did you pay down at the time?

A. $2,500.

Q. How was the property occupied at that time?

A. On the ground-floor the post-office was in one store; A. O. Burch & Co. in one, and a saloon in another. On reflection, am not sure whether it was a saloon or M'r Weeks' store. Paine & Millett occupied two offices on 2d floor, and M'r Bennett the other one. It is my impression the back part of 2d floor, over post-office, was not occupied. The back part, over Burch & Co.'s, was occupied as a paint-shop, but we never got any rent for it from him. Squire McDonald occupied the back part over the north store. The third floor was occupied partly by Sandford & Tapley, and partly by the city council. I don't recollect whether Sandford & Tapley occupied over the south store or not. The upper

story was occupied by the Masons. Those were all the occupants of the building, I believe.

Q. At the time of the negotiation for the purchase of the property from M'r Taylor, or at any time prior thereto, or at the time these notes were given and paid, did you know, or had you ever heard that
304 M'r Taylor had not an absolute title to the property at the time of your purchase?

A. No; he told me he had a good title to it, and I never heard anything to the contrary.

Q. At any of the times mentioned in the last question, had you any knowledge or information received from M'r Taylor or any other source that Eugene Howland had any interest in the property after the foreclosure sale?

A. No, sir.

Q. Did you know, or had you ever heard at any of those times from any source that M'r Taylor had an agreement with Eugene Howland, or Richmond W. Howland, as agent of Eugene Howland, or otherwise, that Taylor was to hold the property in trust for Howland until the rents of the property should cancel the indebtedness due from Eugene Howland to Isaac Taylor, and that when such indebtedness was paid the property was to be reconveyed to M'r Howland?

A. No, sir; I never heard of any such agreement.

Q. Did you know, and were you intimately acquainted with Richmond W. Howland at that time; that is, in 1863?

A. Yes, sir.

Q. Did Richmond W. Howland ever before the commencement of this suit in any way give you any information that his brother had any interest in the property, or did he ever talk with you about it at any time?

305 A. No, sir.

Q. Was he in your employ between 1863 and the present time?

A. Yes, sir; I couldn't state the exact time; for several years; in 1863, 1864, & 1865, he was. He commenced working for us in the fore part of April, 1863.

Q. Who kept the books of your firm?

A. I did.

Q. Did you have frequent business transactions with M'r Howland?

A. Yes, sir; every few days in the fore part of the season.

Q. State whether or not M'r Howland & yourself were intimate in those years.

A. He worked for us as other men did; selling fanning-mills.

Q. At the time you purchased this property, did you have any knowledge or information from any source of any agreement between any parties, whereby Eugene Howland was to have the property back upon the happening of any contingency?

A. No, sir.

Q. Had you any such knowledge or information at the time these notes were paid?

A. No, sir.

Q. Where is the business centre of Racine, and where was it in 1863?

A. Between 4th & 5th s'ts, on Main st., on the west side of the street.

Q. On what side of the street does property pay the highest rent?

306 A. On the west side.

Q. About what percentage?

A. About one-third higher.

Q. Was that so in 1862 & 1863?

A. There was a greater difference then.

Q. Have you made any improvements on the property since you have had it?

A. Yes, sir.

Q. Can you state about what the improvement; averaged per year?

A. I cannot; the property was in bad order when we got it. The roof was leaky and some plastering had fallen off. We had to put a ceiling over the plastering in M'r Burch's store, to prevent the plastering all falling off. We had to put in a new drain under the post-office, and a brick floor in the cellar of the post-office. We put on a new roof, and we did a great deal of repairing which I don't now recollect. There has been a place for storing kerosense built outside. The partitions have been changed in the 2nd & 3rd stories.

Q. How have the taxes been during the time you have had the property as to amount & rate per cent.?

A. We paid the taxes every year on the property. Some years they were higher than others. The exact rate per cent. I don't know as I can tell. Some years they were very high. I have no recollection of what the taxes were in any one year on that particular piece of property.

307 Q. What rate of insurance do you pay?

A. Three and a quarter per cent. now; it has not been as high as that all the time.

Q. What did you regard a fair valuation of the property at the time you bought it?

A. I thought we paid all it was worth.

Q. State whether or not there had been, and was at that time, great depression in real estate at Racine.

A. There was.

Q. What amount of rent did the property produce at the time you—— purchased it?

A. Post-office, $200 per annum; Burch, $330; Weeks, $300; Paine & Millett, $125.00; Lyon & Adams, $100; Bennett, $112.50; Smith & ——, painters, $51.20; McDonald, $75; Sandford & Tapley, $2[illegible]0; City of Racine, $80; Masonic Hall, $200; total, $1,773.70. The $51.20 from Smith & ——, painters, was not paid.

Cross-ex'n:

Q. When did you and M'r Blake commence doing business together?

A. In the year 1858. We have continued in business together ever since, except that I sold out a part of my business to him in October, 1872. The fanning-mill business I sold to him, so far as the manufacture of fanning-mills is concerned, and the real estate owned by the firm connected with the fanning-mill business, although I did not sell

308 all of that. We still own the dock property together. We still own the Howland block property together.

Q. Who kept the books of the firm from the time you commenced business until you sold out to Blake, as you have stated?

A. I did.

Q. What did those books consist of?

A. Day-book & ledger.

Q. Where are those books?

A. In Racine.

Q. In stating what took place, & what was said when Taylor, Blake, Bunce, & yourself were together on the day before the deed you have mentioned was drawn, have you stated all that was said and all that took place at that time?

A. I don't suppose that I have.
Q. What else was said or done at that time?
A. M'r Taylor suggested we should meet at Strong and Fuller's office the next day, and execute the papers—that he would have M'r Fuller there. There might have been some other conversation, but I don't recollect of anything else now. I think we tried to get longer payments, & talked considerably about it. I don't recall anything else said about this matter.
Q. How long was Taylor present at that time?
A. I don't think he was there to exceed an hour—don't know that he was there that long.
Q. How did he happen to come there at that time?
A. I don't know.
309 Q. What was the first thing he said when he came?
A. In substance, that he wanted to sell that property, and wanted to know if we would buy it.
Q. Was that apparently the business on which he came there?
A. I should think it was.
Q. Had you ever had any talk with him on the subject previous to that time?
A. No, sir.
Q. Was the deed executed the next day, as well as drawn?
A. Yes, sir.
Q. Who was present at the time the deed was drawn & executed?
A. M'r Taylor, M'r Blake, M'r Fuller, M'r Durham, myself, and, I think, W'm C. Marshall & his wife were there.
Q. Was there any other object in going to Fuller's office than to have the papers drawn & executed?
A. There was not.
Q. Was any other business transacted there between you at that time?
A. None but the execution of the deed, notes, & mortgage, and payment of the money?
Q. Was M'r's Taylor there?
A. I think not.
Q. In what part of your place of business was this interview between Taylor, Blake, & yourself, that you have spoken of?
A. In the 2d floor of our shop, by the stove.
Q. Who was Bunce?
310 A. A man that was working for us; our foreman.

APRIL 20TH, 1874.

Q. Havn't you any business office connected with your establishment, & had you at that time?
A. Yes, sir.
Q. Where was it situated?
A. On Wisconsin st., between 6th & 7th st., about 100 feet from the shop, north—not connected with the building.
Q. Whose business was it to keep charge of the office?
A. I was there part of the time and M'r Blake part; a great deal of the time there was no one there.
Q. Where did you first see M'r Taylor on this occasion?
A. In our brick shop, cor. Wisconsin & 7th st's, upstairs.
Q Who was upstairs with you when M'r Taylor came in?
A. Several of our men. M'r Bunce was in the same room.

Q. Who were in the same room in which you were at the time M'r Taylor came in?

A. M'r Bunce, M'r Thorkelson, & I think M'r Field was there, and Christopher Olson, but am not certain.

Q. Was a man by the name of Stebbins there?

A. I don't know.

Q. Did you have a man by that name at work for you at that time, whose business it was to occupy that room?

A. I don't know whether he was at work for us at that time or not. It is my impression he was not at work for us at that time.

Q. If he was at work for you at that time, was it his business to be in that room?

311 A. Part of the time, it was.

Q. What part of his work did he do at any other place than in that room?

A. He was sometimes at work below, when the machinery was running, and sometimes above.

Q. Have you your books of account here?

A. Yes, sir.

Q. Can you tell by those whether he was in your employ at that time?

A. Yes, sir; the books show that he was.

Q. Was S. N. Clark in your employ at that time?

A. He was.

Q. Was he present at the time of this interview you have mentioned?

A. I couldn't say whether he was or not.

Q. What was the kind of business that he did?

A. In the winter season he usually helped to get out the material for fanning-mills, and in the summer season helped to set them up & do other work.

A. At the time this interview took place, where did his employment require him to be?

A. I couldn't say.

Q. Wasn't he usually engaged in this room?

. Part of the time he was. If we were running the machinery, it was then his business to run the planer or saw below. We used to run the machinery 2 or 3 days in a week, and put all our men on to
312 the machinery during that time. When we didn't run the machinery, they worked at their benches.

Q. When the machinery wasn't running, then it was the business of all these men to be in this room?

A. No, sir; there were two benches upstairs.

Q. Who occupied or worked at the two benches upstairs?

A. We had no regular men for them; sometimes one and sometimes the other.

Q. May it not be that Stebbins & Clark were both upstairs at the time of this interview?

A. They might have been; don't know where they were.

Q. What do you mean by upstairs; 3d story?

A. Yes, sir.

Q. Was the machinery running at the time of this interview?

A. I don't recollect.

Q. How many men had you in your employ at this time in the shop?

A. I don't recollect.

Q. Can you tell by reference to your books?

A. Yes, sir; I think so. I will examine and ascertain by morning.

Q. When the machinery was running, what was Bunce's part of the work?

A. Sometimes he was tending the engine in the engine-room adjoining, north; other times he would be overseeing the men and picking out stuff. The engine-room is down-stairs, on the ground floor, in an addition off the main building.

Q. Wasn't it his general business to act as engineer?

313 A. I think not, at that time.

Q. When the machinery was running, what part of the work did Thorkelson do?

A. He usually run the saw and matching-machine at the west end of the building, or the tennoning-machine upstairs, in 3d story.

Q. Where is the saw and matching-machine situated?

A. In west end of this same room.

Q. Wasn't M'r Blake there at this time, when M'r Taylor came in?

A. No, sir; he came in shortly afterwards.

Q. Did he come in of his own accord or was he sent for?

A. He came in of his own accord.

Q. What time in the day was it that Taylor came there?

A. I think in the afternoon.

Q. How long after Taylor came before Blake came in?

A. I think not over 15 or 20 minutes; might not be so long as that.

Q. What did Taylor say when he first came in?

A. My recollection is that he asked, "Is M'r Blake in?" or, "Is M'r Blake at home?" He made this inquiry of me. My recollection is I told him he would be in shortly. He then wanted to know if we wanted to buy the Howland property. I told him I didn't know; that I wanted to see M'r Blake. I don't recollect what he said then. M'r Blake came in before anything else was said about it. Then M'r Taylor said

314 he came to see if we wanted to buy the Howland property, and M'r Blake and M'r Taylor sat down on a bench and went to figuring. This was on a saw-bench near the centre of the room, on the south side, near the stairs. Bunce at this time was standing by the stove; don't know that he was doing anything. Don't recollect where Thorkelson was at that time, nor where Field was. Don't know where Olson was, or whether he was at work for us. I was standing by the stove, near the stairs. There was conversation going on between Blake and Taylor at the time of the figuring. Taylor told him it would be a good investment for any one to buy the property, and figured the amount of the rents, and talked about it at the same time. I don't recollect what their words were. Taylor told the amount it was renting for; that it was renting for about $1,700. He also spoke of the roof leaking & damaging the masonic room. I can't recollect what transpired right along, but about that time M'r Blake & myself talked it over by ourselves, while M'r Taylor went to look at some of the machinery. He had given us his proposition before this—to pay him $2,500 down and $750 every six months. We tried to get longer time. The price was $10,000. We talked the matter over and concluded to give it, and made arrangements to meet at Strong & Fuller's office and make the papers. I asked him during the conversation if the title was per-

315 fect, and he said it was. I don't recollect of anything else said. This was the first interview I ever had with M'r Taylor on the subject. I had an interview with M'r Blake on the subject the day previous, or a day or two previous. I don't recollect where it occurred. No one was present beside us. I never had but one interview with Blake on the subject before this. He gave us an abstract of title at the

time the papers were made. I don't know where it is now. I think M'r Knight made it.

Q. Can't you recollect whether the machinery was running at the time this interview took place?

A. No, sir; I cannot.

Q. If it had been running, could this conversation you have been detailing have been carried on so that each party could have understood without difficulty what was said by the other, situated as they were?

A. Yes, sir.

Q. Wouldn't it have been pretty noisy in that room?

A. It might have been. It would depend on the kind of work they were doing.

Q. If Bunce was not acting as engineer at that time, who was?

A. I don't know.

Q. Who else of the men you had in your employ at that time did act as engineer?

A. M'r Stebbins run the engine some; Edward Blake sometimes, and I run it sometimes myself. On referring to my book, I learn that
316 Edward Blake was not at work for us at that time. I don't know who else run the engine for us at that time.

Q. What are the different stores and offices in the Howland block renting for at this time?

A. Post-office, $400; A. O. Burch & Co., $425, for store and room above; M'r Pauli, $500; M'r Paine, $65; Clarence Smith, $60; Whitely & Yout, $25; M'r Stafford, $60; Squire Hamilton, $75; M'r Sandford, $280, for the whole 3rd floor and the Masonic Hall, $275. The city council room and city offices have been removed.

Adjourned till to-morrow morning.

TUESDAY, *April 21st*, 1874.

Present, same parties before mentioned.

Cross-ex'n of James T. Elliott by M'r Hooker resumed:

Q. You have stated that M'r Paine pays $65; how long has he been paying that?

A. Since the 1st day of January, 1874. Prior to that time he paid $80. We have never received anything from Clarence Smith so far. I see by referring to my books that his rent commenced Oct. 20, 1873, at $80 per annum instead of $60. Squire Jones occupied the room before him until August 1st, '73. He died about that time. He paid $80 a year.

Q. You have put Stafford's rent at $60 a year; how long has he occupied?

A. Since August 4th, 1873, @ $60 a year. John Knight occupied it a short time before then @ $6 a month. He rented it for 3 months,
317 ending July 10, '73. M'r Gorton rents the cellar under the post-office. I think he commenced some time last summer or fall. We have received no rent from him yet. I think there is an agreement for him to pay rent; don't know what it is. The cellar was not rented before he occupied, except that the post office kept its coal there.

Q. Have you kept an account of the rents received from that building since getting the deed from Taylor?

A. No, sir; not a book account.

Q. What kind of an account have you kept?

A. Part of the time we kept a book account. When I went to collect the rents I would look up the matter to see who had paid and who had not paid, and when I collected would deposit it and place the name op-

posite the amount on the bank-book, or I would charge it to M'r Blake or myself—whoever collected it.

Q. On what bank-account did you deposit it?

A. Of Blake & Elliott.

Q. On what books did you deposit that which was not deposited?

A. On the firm books of Blake & Elliott.

Q. Hav'n't you, during a part of that time, kept a special, separate account of the rents received?

A. Yes, sir; since July 4th, 1871, I should judge, from an examination of the book; and on examining the book, I find that Gorton & Snell paid $20 for rent of the cellar from Jan'y 16, 1873, to June, July, or August, 1873, and it appears that he rented the cellar from that time
318 until July, 1874, for $25. These entries are in the handwriting of Byron Blake, and are not indexed.

Q. You say you didn't keep any account of the rents received prior to that time?

A. We attempted to keep it on a memorandum for one or two years, I think it was two or three years after we had the building before we commenced. I don't reccollect the exact time when we commenced.

Q. Didn't you keep an a/c of it from the time that you took the building for same time?

A. No, sir; I think not.

Q. Didn't this memorandum that you speak of contain a statement of the rents from the time you commenced receiving them?

A. I think not; I can't tell what time we did commence that book. My impression is that it did not date back to the beginning, but am not certain.

Q. How long did you keep the a/c on that mem'a book?

A. I cannot tell; I was away from town a good deal. I made some of the entries; don't know whether M'r Blake made any or not.

Q. What was the object in discontinuing the keeping of the a/c in that book?

A. I don't know of any reason. We then started a cash-book & failed to keep that up; I don't know whether it was just at that time or not we commenced the cash book. We didn't keep the cash-book more than a year or two—don't know that we did that long.

319 Q. Where was this memorandum-book kept?

A. In our office—part of the time in the safe, and sometimes in the drawer.

Q. Where was the cash-book kept?

A. In the safe part of the time, and in the drawer part of the time, I think.

Q. Where is that mem'm-book now?

A. With our memorandum-books & papers, I suppose. I don't know where the cash-book is—suppose it is there too. I will produce the mem'm-book & cash-book, if I can find them.

Q. Can you give me a statement of the rents received each year from the time you took possession of the building, from each of the stores and rooms in the building?

A. I think I can if I have time. I can't just now, and will do so as near as I can get at it.

Q. Did you ever have a conversation with N. S. Clark, of Racine, who was formerly in your employ, and of whom you spoke yesterday, in reference to the arrangement under which you took the title to that property?

A. I think not; I don't recollect of any.

Q. Didn't you have a conversation with him in reference to it after you took the deed?

A. I think not; I don't recollect of having any.

Q. Didn't you have such a conversation with him shortly after you took the deed, in which you said to him that you were holding
320 the property for Howland, that Howland expected to redeem it, but that you didn't expect, or didn't think, that he would be able to do so, or a conversation or statement to that effect?

A. No, sir.

Q. Do you know A. P. Dickey, of Racine?

A. Yes, sir.

Q. Did you have a conversation with him in reference to the arrangements under which you took the title of the property after you took the deed?

A. No, sir; not to my knowledge.

Q. Didn't you have such a conversation with him, after you took the deed, in which you said to him in substance that Howland was coming out all right with the Howland block; that you, or you and Blake, had taken it off from M'r Taylor's hands, and were carrying it for Howland in his stead, and that as soon as the rents paid the indebtedness, the property was to go back to Howland, or words to that effect?

A. No, sir.

Redirect ex'n:

Q. At what time did you open an account with tenants on your property?

A. In July, 1871.

Q. Had you at that time other property than the Howland block?

A. Yes, sir.

Q. What other property that you were renting?

321 A. A house on Wisconsin st., rented to C. C. Case; a hotel on 6th st., rented to M'r Bouton; a dwelling-house on Chatham st., to John Tapley; a brick house on Chatham st., to M. Thorkelson; a house on 8th st., to George Conro; a shoe-shop on 6th st., to John Meyer; a house on Chatham st., to J. A. Dull.

Q. Did you open an account with all your tenants in one separate book in 1871?

A. Yes, sir.

Q. That includes the tenants, also, in the Howland block, does it?

A. Yes, sir.

Q. Prior to that time, had you opened any accounts with any of your tenants on your firm books?

A. I think that we did, on the ledger. I don't recollect when it was. I find, on referring to the $\frac{3}{C}$ of M. Thorkelson, on the firm ledger, that he was charged with rent for 2 mo's, $80, from Oct. 15th, 1872, to Dec. 15th, 1872.

Q. Was Thorkelson renting one of your houses & working for you?

A. Yes, sir.

Q. Did you have accounts with any other of your workmen who were renting property from you?

A. I don't recollect that we had at that time, but we had later. This ledger runs from 1859 to 1865.

Q. Look at the ledger and see if you find an account opened with any tenants in the Howland block for rent.

A. I do not.

Q. How did you keep track of the rent between yourself and the tenants?

A. Before we went to collect, we looked over the bank-book
322 to see who had paid, and when collected, we deposited the money in the bank, and put the name of the party from whom received on the bank-book. We generally recollected who had paid, and who had not.

Q. Did you mark your bank-book with the names of all parties from whom you rec'd money?

A. Yes, sir; when we rec'd collections through banks that had several notes or collections, we marked it all from the bank.

Q. Did you keep a regular cash a/c?

A. We attempted it for a short time.

Q. For what period of the time, that you had been in business, did you keep up the cash a/c?

A. I can't state the exact time. Don't think we kept it a year. We had no bookkeeper.

Q. Who kept the books that were kept?

A. I did, most of it. I think M'r Blake did some writing on the books.

Q. Did you have an account opened with Blake, and another with yourself?

A. Yes, sir.

Q. When either of you collected money, and did not deposit it, but used it yourselves, whether collected for rent or otherwise, how did you enter it?

A. If he collected it and kept it, 'twas charged to him; if I collected it and kept it, it was charged to me, and a note made in the entry of whom the money was rec'd.

323 Q. At the time you bought the Howland block, did you own any other property with M'r Blake for rent?

A. I think not. On reflection, the back part of the office building was occupied by Thorkelson. I think we owned no other property at that time that we rented. I think we bought the exchange after the Howland block.

Q. How were the repairs made on the Howland block?

A. They were made by our men usually; sometimes we got other parties to do the work. Sometimes we would furnish the material from our shop, and sometimes we would go to other places where it was to be sold, and buy the material.

Q. Did you ever keep any account of the repairs made on the building; if so, what?

A. When we were putting on the roof, the next year after we bought it, we kept an account of what it cost; any small matters we did not keep any account of.

Q. Where is the account of the expense of the roof?

A. I don't know.

Q. What do you mean by keeping an account of it?

A. We kept an account of the amount of labor performed & material furnished. Did not enter it on the books; made no charge of it against or in favor of any person; simply kept a mem. of what it cost. I don't know whether I have the mem. in the office now or not.

Q. Did you ever open any account with the Howland block?

A. No, sir.

Q. How much did you pay down at the time you bought it?

324 A. $2,500. We borrowed it at the bank, the Racine Co. or 1st National Bank. My impression is we borrowed it for 90 days.

Q. Have you ever seen the complainant, Eugene Howland?

A. Not to my knowledge.

Q. Did you ever hear from any source before the commencement of this suit that Eugene Howland claimed any interest in this property?

A. No, sir.

Q. At what price have you held this property for the last six or eight years, and what do you now hold it at?

A. I have offered several times to sell my interest in it for $7,500; my interest is a half interest.

Q. Will you make as complete a statement as you are able of the repairs made upon the building since you purchased, and the expense of the same, and the amount paid for taxes & insurance during each of the years you have owned the property?

A. Yes, sir.

Recross-ex'n:

Q. You said you borrowed the $2,500 you paid down; did you give a note for it?

A. Yes, sir; that is my impression; our firm note. I don't know where that note is now; I think it was not preserved.

Q. Did you give a good many notes in your business matters?

A. Yes, sir; we borrowed some money, some years since 1863 we have borrowed money & given notes with interest at ten per cent.,
325 and also gave notes for articles purchased in the business, and some years we did not give any notes.

Q. Have you usually preserved those notes after being paid?

A. Until the time I sold out to M'r Blake, we did. At that time a great many of the papers were destroyed. That was a year ago last October.

Q. Why did you preserve the notes given in this transaction after they were paid, and not the other notes which you gave?

A. They were with the papers pertaining to the property, and not with the other notes. That is the only reason. We kept our real-estate matters, pertaining to a piece of property, in an envelope marked.

Q. To whom have you offered to sell your interest in this property for $7,500, and when?

A. To Burch & Bruce, and to the trustees of the Masonic Society. I don't recollect the exact date. At the time we made the last lease to the Masons; they talked of it?

Q. To what persons did you make this offer to sell to Burch & Bruce, and to the Masonic lodge?

A. Burch & Bruce both, I think, two or three times; don't know that I have within two years. Before that I did several times. I think I did a year ago last October. The offer to the Masonic lodge, I think, I made to Stephen Bull, one of the trustees, and I think M'r Paddock, but am not certain; four or five years ago, when I made the last lease to them. I don't recollect of any one else.

326 Q. Wasn't your firm interested in the Catholic Church property on Chatham st. at the time you took the deed to this property?

A. I don't know what year we did buy that. I can tell by referring to books or memorandum at home.

Adjourned to Thursday, July 9, 1874.

THURSDAY, *July 9th*, 1874.

Present, same parties before mentioned.

Cross-ex'n by M'r Hooker continued:

Q. Have you the date of the purchase of the Roman Catholic Church property that I asked you about the other day?

A. Yes, sir; the date that I took my deed was the 27th day of February, 1865.

Q. From whom did you take your deed?

A. From Osborn & Blake.

Q. What is the date of the purchase of the property from Bishop Henni?

A. June 20th, 1864.

Q. When was the building put on the property; the two dwelling. houses?

A. I should think in 1865 or 1866.

Q. Have you got the book that I asked you for in relation to this Howland block property?

A. I have, and it is the book M'r Blake has been examined on, and called the pass-book, and is hereto attached, marked "Exhibit 15."

Q. In whose handwriting are most of the entries in this book?

327 A. In mine.

Q. Were these entries made at about the time they bear date?

A. Some of them were, others were not.

Q. Which were not?

A. These are the dates that the rents became due, but they were seldom paid at the time. The post-office rent was paid the day before it was due, the others were not, and when they were entered they were entered as of the day they were due.

Q. In whose handwriting are the parts of leaves on the back part of this book, where the principal part of the leaves have been cut out?

A. In mine, sir.

Q. Have you got the cash-book that I asked you to bring?

A. Yes, sir.

(Witness produces the book.)

Q. Is this the only cash-book Blake & Elliott ever kept?

A. Yes, sir.

Q. When was it opened and closed?

A. It was opened by M'r Blake September 24th, 1860, and closed December 1st, 1861.

Q. When was this account-book marked "Exhibit 15" opened & closed?

A. The first entry on the credit side is April 18th, 1863, and the last entry is October 1st, 1871.

Q. What is the last date in the book so far as it appears to have been kept as an account-book, with a debit & credit side to it?

A. December 1st, 1865, is the last credit.

328 Q. Have you the statement of rents that you were to furnish?

A. Yes, sir.

(The witness produces the paper, and is marked "Exhibit No. 16," and offered in evidence and hereto attached.)

Re-direct ex'n:

Q. What is the first item in the book marked No. 15?

A. It is money received of Isaac Taylor, April 21st, 1863. He received the money from some of the tenants after he sold to us, & paid it over to Blake & Elliott.

Q. What were the entries on the leaves in the back part of the book that have been cut out?

A. The dates that the rents became due and the amounts that each tenant was to pay.

Q. Do you know who cut the leaves out of the book?

A. I do not, sir. I did not know that they were cut out until I hunted up the book at the request of M'r Hooker.

Q. On your direct examination you state that you think that you commenced keeping cash-book after you left off keeping that book; what do you say about that?

A. I was mistaken about the date when I come to look at the cash-book.

Q. For what purpose was that little book, No. 15, kept?

A. I wanted to know what the building would cost us when we got it in good repair; it was in bad order when we got it.

Q. Have you paid the taxes on the property from year to year
329 since you bought it?

A. We have.

Q. What amount of taxes have you paid?

A. The paper I hold in my hand is a statement of the taxes paid by Blake & Elliott from 1863 inclusive to 1873 inclusive.

(The statement here referred to by the witness is offered in evidence by defendants, & marked "Exhibit No. 17.")

Q. Have you paid insurance on that property since you bought it?

A. Yes. sir.

Q. What amount of insurance have you carred upon the property?

A, We have carried most of the time $10,000—$12,000 we have carried 4 years.

Q. What amount of premiums have been paid from year to year since 1863?

A. The paper that I hold in my hand is a correct statement of the amounts paid each year, as near as I can ascertain.

(The paper is offered in evidence, marked "Exhibit No. 18.)

JAMES T. ELLIOTT.

It is stipulated and understood by & between the respective parties that in case there should be a decree for the complainant, and an accounting become necessary, that further testimony may be taken bearing upon such accounting.

330 *Def'ts' Exhibit No.* 16.—*Edw. Kurtz, Examiner in Ch'y.*

1863:			
Post-office	3 q'rs.	150 00	
A. O. Burch & Co	" "	247 50	
North store, B. F. Weeks	" "	225 00	
Front room over P. O., Bennett	" "	84 36	
Rear " " " Lyon & Adams	" "	75 00	
Front room middle & north store, Paine & Millet	" "	93 75	
Back-room, north store, McDonald	4 q'rs.	80 00	
Council-room, 3rd story	" "	80 00	
Advocate office	3 "	150 00	
Masonic Hall	" "	150 00	
			1,335 61

1864:			
Post-office	4 q'rs.	200 00	
A. O. Burch & Co	4 "	382 00	
North store, B. F. Weeks	4 "	300 00	
Front room over P. O., Bennett	4 "	112 48	
Rear " " " Lyon & Adams	4 "	100 00	
Front " middle & north store, Paine & Millet	4 "	125 00	
Rear room over north store, McDonald	4 "	69 00	
Council-room	4 "	80 00	
Advocate office	4 "	200 00	
Masonic Hall	4 "	200 00	
			1,768 48
1865:			
Post-office	4 q'rs.	200 00	
A. O. Burch & Co	" "	414 25	
North store, Weeks & Beck	.....	319 00	
Front room over P. O., Bennett	1 y'r.	112 48	
Rear " " " Lyon & Adams	1 y'r.	100 00	
Front " middle & north store, Paine & Millet	"	125 00	
Back room north store, McDonald	.....	75 00	
Council-room, 3rd story	1 y'r.	80 00	
Advocate office	1 y'r.	200 00	
Masonic Hall	1 "	200 00	
			1,825 73
331 1866:			
Post-office	4 q'rs.	200 00	
A. O. Burch & Co	4 q'rs.	425 00	
North store, Beck & Habachek	.....	287 50	
Front room over P. O., Bennett	.....	84 36	
Rear " " " Lyon & Adams	.....	100 00	
Front room over midd'e & north store, Paine & Millet	.....	137 50	
Back " " north store, McDonald	.....	75 00	
Council-room, third story	.....	80 00	
Advocate office	.....	200 00	
Masonic lodge	.....	200 00	
			1,789 36
1867:			
Post-office	4 q'rs.	200 00	
A. O. Burch & Co	"	425 00	
North store	.....	400 00	
Front room over P. O., Bennett	.....	118 12	
Rear " " " Lyon & Adams	.....	100 00	
Front room over middle & north store, Paine & Millet	.....	150 00	
Back room over north store, McDonald	.....	72 70	
Council-room, third story	.....	80 00	
Advocate office	.....	200 00	
Masonic Hall	.....	200 00	
			1,945 82
1868:			
P. O	.....	200 00	
A. O. Burch & Co	.....	425 00	
North store, F. Hubachek	.....	400 00	

Front room over P. O., Warner & Yout	69 50	
Rear " " " Lyon & Adams	100 00	
Front " " middle & north store, Paine & Millett	150 00	
Back room over north store, McDonald	75 00	
Council-room, third story	80 00	
Advocate office	200 00	
Masonic Hall	215 00	
		1,914 50

332 1869:

Post-office	200 00	
A. O. Burch & Co	425 00	
North store, F. Hubachet	400 00	
Front room over post-office	125 00	
Rear room " Lyon & Adams'	100 00	
Front room over middle & north store, Paine & Millet	150 00	
Back room over north store, country orders	75 00	
Council-room, third story	80 00	
Advocate office	200 00	
Masonic lodge	275 00	
		2,030

1870:

Post-office	300	
A. O Burch & Co	425	
North store	400	
Front room over P. O., Yout	125	
Rear " " "	....	
Front room over middle & north store, Paine & Milet	150	
Back room over middle & north store	72	
Council-room, third story	80	
Advocate office	200	
Masonic lodge	275	
		2,027

1871:

P. O	350	
A. O. Burch & Co	425	
North store, Hubachet	400	
Front room over P. O., Youts	113 75	
Rear " " " fr. Jones	80 00	
Rooms over & north store, Paine & Miller	150 00	
Back room over north store	75 00	
Council-room	80 00	
Advocate office	200 00	
Masonic Hall	275 00	
		2,148 75

333 1872:

P. O	400 00	
A. O. Burch & Co	425 00	
North store fr. Hubachet & Pauli	475 00	
Front room over P. O., Yout, Durand W	125 00	
Rear room over P. O., Jones	80 00	
Front room over middle store	80 00	
" " " north "	18 00	
Back " " " "	81 75	

Council-room		80 00	
Advocate office		200 00	
Masonic Hall		275 00	
			2,239 75
Till July, '73:			
P. O.	2 q'rs	200 00	
A. O. Burch & Co	" "	212 50	
A. Pauli	" "	250 00	
Front room ov'r P. O., W. D. & Y.	" "	62 50	
Rear " " " Jones		40 00	
Front " " middle store		40 00	
Back " " north "		37 50	
Council-room, third story		40 00	
Advocate office (not yet paid)		.....	
Masonic Hall		137 50	
			1,020 00

334 *Def'ts' Exhibit No.* 17.—*Edw. Kurtz, Examiner in Ch'y.*

Statement of taxes paid on Howland block.

1863.	City, 24.50; State & co., 47.78	72 28
1864.	Special	116 33
1864.	City, 70; State & co., 69.30	139 30
1865.	" 78.40; " 100.80	179 20
1865.	Bounty	46 20
1866.	City, 108; State & county, 73.73	181 73
1867.	Special	105 60
1867.	City, 131.20; ward, 6.40; State & co., 57.20	194 80
1868.	" 152; " 5.22; " " 54.15	211 37
1869.	" 141.70; " 5.99; " " 55.90	203 59
1869.	Part lot 4, b'k 18	1 45
1870.	City, 139.10; ward, 10.40; harbor, 182; S. & c., 61.10; railroad, 92.30; school, 14.10	499 00
1871.	City, 119.60; ward, 5.20; special, 83 20; S. & co., 65.52	273 52
1872.	" 126.75; " 4.88; State, 69.68; special, 144.30	345 61
1873.	" 140.40; " 13.00; " 70.07; " 153.40	376 87

335 *Def'ts' Exhibit No.* 18.—*Edw. Kurtz, Examiner in Chanc'y.*

Insurance paid on Howland block since October 6th, 1863.

Insurance paid on	$10,000	at rate of	1%		$100 00
Oct. 6, 1864, "	" 10,000	"	"		100 00
" 1865, "	" 10,000	"	1¼		125 00
" 1866, "	" 10,000	"	"		125 00
" 1867, "	" 10,000	"	2 & 1¾		188 00
" 1868, "	" $12,000	"	2		240 00
" 1869, "	" 12,000	"	2		240 00
" 1870, "	" 12,000	"	2		240 00
" 1871, "	" 10,000	"	1½		150 00
" 1872, "	" 12,000	"	2		240 00
					1,748 00
1873, "	" 10,000	"	3¼		325 00
					$2,073 00

336 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of Eldridge G. Huggins, John H. Palmeter, Benjamin F. Weeks, Alexander O. Burch, John Tapley, Henry T. Fuller, Warren J. Durham, Thomas J. Emerson, Hermon Warner, George Bull, Frederick W. Bruce, & James T. Elliott, were taken before me pursuant to notice duly given, and by consent of the counsel of the parties; that I was attended by the said counsel at the times and place as stated in the captions of said depositions, and by the said witnesses, who were of sound mind and lawful age, and that said witnesses were by me first duly & publicly sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions then by me reduced to writing in the presence of said witnesses respectively & from their statements, and after carefully reading the same over to said witnesses respectively they subscribed the same in my presence. I have retained said depositions in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said depositions & captions named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, & of the Independence of the United States the 99th.

EDW. KURTZ,
Examiner in Chancery, U. S. Cir. C't E. Dist. Wis.

337 I further certify that the exhibits referred to in said depositions of James T. Elliott, and marked by me respectively Def't's Exhibits Nos. 15, 16, 17, & 18, were produced before me, and that said Exhibits 16, 17, & 18 are hereto annexed, and said Exhibit 15 accompany the same separately.

EDWARD KURTZ,
Examiner in Chancery.

338 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions in the above-entitled cause on the part of the defendants, taken pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

WEDNESDAY, *April 15th, A. D.* 1874.

Present, D. G. Hooker, counsel for complainant; John T. Fish & C. E. Dyer, counsel for defendants.

Deposition of John Kranz.

JOHN KRANZ, being duly sworn as a witness on part of defendants, deposes and says:

I will be 55 years old next October. Am a dealer in groceries & pa-

per & paper-stock, in Racine. Have resided in Racine 29 years next October. During that time I have, I think, been acquainted with the price of real estate. The condition of the real-estate market from the year 1860 to 1865 was pretty poor.

Q. How did the market value of real estate in the years 1856 & 1857 compare with its value in the years 1860, 1861, 1862, 1863, 1864, & 1865?

339 A. In 1857 I bought a twenty-foot lot and paid $100 a foot for it; three months after the panic came on. I had paid $600 down on it. I went to the man I bought it of and told him if he would give me up the mortgage and papers I would make him a present of the $600. He said he couldn't do it, and that I must stick to my bargain. There was a story-and-a-half frame building on the lot. That lot was 100 or 120 feet from the Howland block, on same side of the street.

Q. Was store property renting readily on that side of the street in the years 1861 and 1862?

A. No, sir.

Q. State what the fact was about there being a demand for business property on that side of the street, from 1860 to 1863.

A. In 1860 there were some vacant rooms in the Baker House, now the Huggins House, and Henry T. Fuller was the agent. I went to him and asked him if he would let me store some things in a store-room in that house. He told me I could use it until he got a chance to rent it. I used it for a year or a year and a half without rent. After I went out I think he rented it.

Q. Was property in that block saleable in 1862 and 1863?

A. No; real estate was not in a prosperous condition then. I bought my partner out in 1865—his half interest in the same property I spoke of—for $700, and that was $200 more than his half was worth. We were carrying on business together, and that price included the
340 good-will of the business.

Q. State whether it was difficult to raise money on real estate in those years, from 1861 to 1864.

A. Yes, sir. I went to Judge Wording and asked him for a loan of $100, and he says, do you mean to insult me by asking me to loan money on real-estate security in Racine? And he refused to take real-estate security to loan me the money. M'r Wording was a wealthy man at that time, and in the habit of loaning money. He told me he had money and would only loan it on farm property.

JOHN KRANZ.

Deposition of Albert G. Knight.

ALBERT G. KNIGHT, being duly sworn as a witness in behalf of the defendants, deposes and says:

I am 65 years of age, and am a real-estate and loan agent, and keep an abstract of title in Racine County. I reside in Racine, and have resided there 38 years. I have been acquainted with the value of real estate in Racine. In my business I have had opportunity to know the prices of sales in Racine. I have been engaged in selling property more or less. I have known the Howland block ever since it had that name, or ever since it was built. The west side of that street was the best for business during the years 1861, 1862, and 1863. It is difficult to
341 give the exact time when the east side became better than it was, but it has been gradually getting better since the post-office was located in the Howland block. The east side never has been as good

as the west side. It commenced to improve about that time. Prior to that time, and at the time that block was built, property was not much enquired for on that side of the street for purchase or for rent. From 1859 to 1865 the general condition of the real-estate market in Racine was very much depressed. Before 1865 there began to be some inquiry for property.

Q. Give a comparison of the difference in value of real estate in 1856 & 1857, and 1862 & 1863.

A. It is difficult to give a comparison, as real estate fluctuated differently in different parts of the city. A small amount of property, the best located for business, was held up near the 1856 price, and other property varied according to circumstances. Lots in the outskirts of the city that were very saleable in 1856 had scarcely any market value in 1862 and 1863.

Q. How was it with the Howland block; what was the fair market value of that property in 1862 and 1863?

A. It is hard to say what the market value was, there was so little sale of property in that locality at that time. I think the general opinion was that the Howland block was worth about $12,000. I recollect when
342 M'r Taylor purchased it for $9,000. I thought it was about as much as I would be willing to give for it. When I say that $9,000 was as much as I would have given for it, I mean that it was as much as I would give for it with a view of selling it, or as much as a man could afford to give with a view to selling it.

Q. Do you recollect now of having your attention called to the sale at the time it was made, and then coming to a conclusion as to what the property was worth?

A. I recollect that soon after the sale, don't recollect how long, certainly, I was conversing with some person about it who thought it was worth $12,000, and I thought myself that $9,000 was as much as I would advise any one to give for it on speculation.

Q. Was there any particular difference in the value of real estate between June, 1862, and April, 1863?

A. The price was rising gradually in those years; there was a little more market every year.

Q. Did you know Isaac Taylor in his life-time?

A. I did.

Q. What kind of a business man was he?

A. I regarded him as one of the most thorough and competent business men I ever met with.

Q. What were his habits as to being cautious and careful about his business transactions?

A. He was remarkably particular in making any bargain or agreement; very careful not to leave anything unexplained; one of the most particular men in making a bargain that I ever knew. I found it difficult
343 to draw an agreement for him that was sufficiently precise to please him.

Q. What were his habits about reducing his agreements to writing?

A. I know nothing about it except in so far as he employed me.

Q. As far as your knowledge extends, what were his habits about reducing his agreements to writing?

A. All his business transactions that I knew anything about were reduced to writing.

Q. Were you doing conveyancing to some extent in those years?

A. I was.

Q. Did you do considerable business for M'r Taylor?

A. I drew a great many deeds for him. I knew Charles Clement. I made a deed from M'r Taylor to M'r Clement of a lot adjoining the Howland block, and I think it included a part of the wall or the use of the wall of the Howland block. My impression is that previous to the deed I made an agreement between them as to what was to be done. This agreement was carried into effect by the execution of the deed and an agreement back to M'r Taylor from Clement.

(Witness is here shown certified copy of a deed from Isaac Taylor & wife to Charles Clement.)

This is the deed above referred to. I think the value of the strip of land for the alley was about $100. The alley was in the rear, not directly, of the Howland block, but cornering on it. The alley runs east to Chatham street. I think the N. W. cor. of the alley touches
344 the S. E. corner of the Howland block. I have no recollection about the consideration of the deed having been paid. The agreement that was drawn before the deed was executed was not put on record. I drew the deed referred to for M'r Taylor. I think that none of the property in that block could have been sold in 1861, 1862, and 1863 for what it cost to put up the buildings.

Q. For what proportion of the cost of buildings on that side of the street did property sell at in those years?

A. I am not familiar with the cost of buildings; I knew the Huggins House block.

Q. How did the value of the two blocks compare in 1862 and 1863?

A. I think the Howland block was considered worth from a quarter to a third more than the Huggins House.

Q. Was M'r Taylor considered a successful man in procuring tenants to his buildings?

A. I don't know as to that in particular; but he was very successful in everything he undertook.

Cross-examination:

Q. What persons did you hear express an opinion in 1861, 1862, or 1863 that the Howland block was worth about $12,000?

Ans. I am not able to say. I have an impression that the conversation I alluded to was with Tho's J. Emerson. I do not recollect of hearing any one else express an opinion about that time.

345 Q. Didn't the value of the Howland block in 1861, 1862, and 1863, as an investment, depend principally on the amount of rents it would produce? I speak of it as an investment, & not as a speculation.

A. I think it did.

Q. What amount of annual rents should it have produced, in your opinion, during those years to have made it a good investment at $12,000?

A. About $1,500, perhaps.

Q. Did M'r Taylor ever procure you to assist him in making any verbal agreements?

A. He did not.

Q. Was the agreement you have spoken of, which was given back by Clement to Taylor, placed on record?

A. I think it was.

Redirect ex'n:

Q. After deducting taxes, insurance, and repairs, what rent should

be realized in order to make the property a profitable investment at $12,000?

A. About $1,200.00.

Q. In 1856 or 1857, state whether you have knowledge of the purchase of a tract of land on the north side of the river in Racine?

A. I have; it was in 1857.

Q. What was the estimated value of that land at the time it was purchased?

346 A. It was purchased by myself and my partner, M'r Cram, for $14,000. There was 3 or 4 acres of it. Subsequent to our purchase it was sold for, I think, between $3,000 and $4,000. It was sold about 1866, I think.

Q. Is the rental value of a piece of property, for a year or two years, a criterion as to its value for investment?

A. It might not be.

Q. Doesn't it depend on the ability of the owner to lease for a long term of years, and the rise or depreciation in value of property in the vicinity, and the nature of the structure as to permanency?

A. In a small place, where there is no known value per foot, the price of rent depends very much on the ability of the owner to get good prices. In a place where property is known to have a stated value, I think it would not, so much.

Q. Might not property that was producing ten per cent. net on its price for one or two years be a very poor investment at such price?

A. It might, and it might be a good one, according to circumstances.

Q. To what do you attribute the depression in real estate in Racine from 1858 to 1865?

A. It was owing to the general stringency of the money market; the general change that came over the country in 1857. There had been considerable speculation in property in 1855, 1856, and 1857, and there was the city debt, which had its influence.

347 Recross-ex'n:

Q. Where was this 3 or 4 acres that you purchased north of the river situated?

A. Some of it was along the river dock, on the north side; some of it near the river, and some of it half a mile from the river; unimproved property.

Q. Was that property sold on foreclosure of a mortgage when it brought but $3,000 or $4,000, as you have said?

A. It was; there had been about $2,500 expended in improvements on it—in dockage and filling lots on the river—before the foreclosure sale.

ALBERT G. KNIGHT.

Deposition of Geo. Q. Erskine.

GEORGE Q. ERSKINE, being duly sworn as a witness on part of the defendants, deposes and says:

I am 46 years of age; reside in Racine; am collector of internal revenue for this district. I know the defendants in this suit, Mess. Blake and Elliott, and also Richmond W. Howland. I know the brick-yard property, near the city of Racine, that was once operated by Richmond W. Howland. I purchased that property in 1868, I should think it was perhaps 1869. M'r Blake negotiated the sale of the property to me. I have no recollection of having any talk with Richmond W. Howland

about it. My recollection is that the price of brick in 1858 was
348 about $5 per thousand. In 1857 they were higher, considerably.
I furnished some of the brick used in the construction of the Howland block building.

Cross-examination:

I can't exactly tell when I furnished those bricks. I think it was in the fall of 1858; they were common brick. Don't recollect how many, nor what price I received for them; think the price was about $5 delivered, but can't say positively. I furnished all the front brick for the building. Don't recollect the price. I recollect of M'r R. W. Howland operating that brick-yard for several years prior to my purchase of it, but I think it was not operated at all during the year prior to the time I bought it. I bought the lumber connected with the yard and a horse about a year before I purchased the place of M'r Blake, I think. I purchased the lumber & horse of M'r Howland, I believe.

Redirect ex'n:

I owned a yard a little over a mile southeast of the Howland yard, and was operating it at the time Howland was operating his yard.

GEORGE Q. ERSKINE.

349 Defendants offer in evidence a warranty deed executed by Isaac Taylor and wife to Charles Clement, dated July 24th, 1862, consideration named $1,000, of part of lot 4 in block 18, and part of south wall of Howland block building, recorded in register's office of Racine County, July 31st, 1862, in volume 43 of deeds, pages 54 and 55, marked "Defendants' Exhibit No. 1."

Also certified copy of deed of sheriff of Racine Co. to Isaac Taylor of lot 12, block 18, in first ward of Racine, executed June 19th, 1862, and recorded in register's office of Racine Co., Oct. 6th, 1862, in vol. 43 of deeds, pages 145 and 146, marked "Defendants' Exhibit No. 2."

Also, certified copy of deed from sheriff of Racine County to Daniel P. Rhodes of same property, executed May 22, 1860, and recorded in register's office of Racine County, July 31st, 1862, in vol. 43 of deeds, pages 57, 58, 59, and 60, marked "Defendants' Exhibit No. 3."

Also, certified copy of deed from Daniel P. Rhodes & wife to Isaac Taylor of same property, executed July 28th, 1862, and recorded August 1st, 1862, in vol. 43 of deeds, page 60, marked "Defendants' Exhibit No. 4."

Also, certified copy of tax deed from Racine County to Daniel P. Rhodes of same property, executed Nov. 15th, 1859, and re-
350 corded same day in vol. 40 of deeds, on page 243, marked "Defendants' Exhibit No. 5."

(Compl'ts counsel objects to the admissability of the tax-deed last named, for the reason that it already appears that M'r Howland, Isaac Taylor, and the defendants, Blake & Elliot, were continuously in possession from prior to the date of that deed to the present time, claiming under another title, and upon the ground that the evidence is incompetent & immaterial.)

Also, certified copy of tax-deed from Racine City to Isaac Taylor, executed Nov. 15th, 1859, of same property, and recorded same date in vol. 40 of deeds, on pages 240 & 241, marked "Def'ts' Exhibit No. 6."

(Objected to by compl't's counsel, same as above.)

Also, certified copy of tax-deed from Racine City to Isaac Taylor, of same property, executed Nov. 15, 1859, and recorded same day in vol. 40 of deeds, on pages 241 and 242, marked "Def'ts' Exhibit No. 7."

(Same objection as last named.)

Also, judgment-roll, in case of Isaac Taylor vs. Eugene Howland and others in Racine circuit court, which was an action for foreclosure of mortgage, referred to in the testimony, made by Eugene Howland to Isaac Taylor, which mortgage was executed October 21st, 1857, and which judgment-roll was filed in clerk's office of said court, February 26th, 1862; also, report of sheriff's sale of premises in question,
351 filed August 5th, 1862, and order of said court confirming the sale, filed the same day.

It is stipulated by counsel that certified copies of said judgment-roll, report, & order may be filed and read and used in evidence in place of said original papers, with same force as the originals, and said copies are marked "Defendants' Exhibit No. 8."

Also, judgment-roll, execution, report of sale, & order confirming the same, in case of Stephen Wiltse & others against Eugene Howland & others in Racine circuit court, copies of which are hereto annexed, marked "Defendants' Exhibit No. 9."

It is also stipulated by counsel that said copies may be filed and read and used in evidence, in place of the original papers, with same force as the orignals, but complainant's counsel objects to the competency and materiality of the same.

Also, warranty-deed of premises in question, with other premises, executed April 18th, 1863, by Isaac Taylor & wife to defendants, recorded in register's office, Racine County, April 20th, 1863, in volume 43 of deeds, page 486, marked "Defendants' Exhibit No. 10."

Also, ten notes, for $750 each, made by defendants to Isaac Taylor, payable in 6, 12, 18, 24, 30, 36, 42, 48, 54, and 60 months from date, and all dated April 18th, 1863, and bearing interest, being the same notes shown to the witness Elliott, and referred to by him in his testimony, marked "Defendants' Exhibit No. 11."

352 Also, a statement of taxes paid on the property in suit from 1859 inclusive to 1873 inclusive, with statement of assessed valuation of same property from and between same years.

Compl't's counsel objects to the statement as incompetent and immaterial, as evidence of any fact, except as showing the amount of taxes paid, but the paper may have the same effect as if the city treasurer had been produced with his books as a witness, marked "Def'ts' Exhibit No. 12."

353 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of John Elkins and Henry S. Durand, taken on the part of the defendants in the above-entitled cause, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

MONDAY, *April 20th*, 1874.

Present, D. G. Hooker, counsel for complainants.
John T. Fish, " " defendants.

Deposition of John Elkins.

And the said JOHN ELKINS, being duly sworn, deposes and says:
I am 59 years of age; reside in Racine; and by occupation am a jew-

eller; have resided there since September, 1852. I rented the store now owned by George Wustun, built by Wustun and Neil, on the west side of Main street, between 4th & 5th st's, in Racine, and nearly opposite the Howland block, and had a lease of it from 1852 to 1862. The rent for the store averaged about $600 per annum for the time we had it. I think the store is on a 20-foot lot, and the store 90 feet deep. I
354 think the expense of the finish of the store is about the same as the stores in the Howland block. The $600 was the rent of the lower store-room. M'r Martin Clancey occupies the store-room. I moved from there, I think, in April, 1862, down to Titus Hall, on the corner of 5th & Main streets, on west side of Main st. I rented the corner store—one floor—calculated to be 20 f't by 60. I think the room inside was but little over 18 feet wide. I occupied it about two years and 9 months. I got that store for $360 rent; 'twas a brick building. After being burned out there, I went back to the same store I had before in Wustun's building. I had to hire the whole building, then, at $800, but rented the two upper rooms off, so as to reduce my rent to $600. At that time the west side was considered the best for business; rents were more on that side. While we were paying $600 on that side, stores on the other side were renting for $300 and $400, and some for less than $300. That was at an early day; some years ago. I think rents on the west side generally averaged about one-third more than on the east side. The post-office, I think, has a tendancy to draw business to the east side. I have very little recollection of the prices of real property from 1859 to 1862 or 1863, as there was so little changing hands. I recollect generally that it was not quick sale about that time.

Cross ex'n:

Q. At the time you took the lease of the first store you have spoken of, did the lease cover the whole building?

A. No, sir; only the store.

355 Q. What rate of rent was fixed by the lease?

A. $600 per annum for the first three years; that lease was held by Heath & Elkins from Wustun & Neal. We continued there four years longer at same rate, under lease from M'r Wustun. The last three years I held alone, at same rate. After the Titus building was burned I went back there and stayed until the Titus building was rebuilt; don't know exactly how long. I should think it was somewhere about three years.

Redirect ex'n:

The first time I was in the Titus block I only had a store 60 feet deep; when I returned there I had a store 107 feet deep by 20 feet wide, including the wall, for which I paid $900 rent per annum.

Recross-ex'n:

After I went back to the Titus block I occupied the corner store-room of that block, fronting both on Fifth street and Main, with an outside door on each street, and also a door in the alley. The door on Fifth street was near the rear end of the store.

Q. While you were paying $900 for t.e corner store, what rent was paid for the other stores in same building?

A. The one next door was rented with bare walls for $600 per annum, and fitted up by the parties who leased it, on a lease of three
356 years. The next store north was occupied by M'r Winslow, & fitted up for his business, and the rent, I think, was $650, but am not

positive. These stores are not as deep as the one I occupied by seven feet. I think it was in January, 1865, the Titus block burned, and I got back there about three years after that. The building was rebuilt about three years, more or less, after it was burned.

Redirect ex'n:

The entrance on 5th st., near the rear, was a side-entrance for the purpose of receiving goods. There were temporary board partitions across each of the two stores north of mine, running across about two-thirds of the way back.

Recross-ex'n:

In the Wustun building I had also the cellar and the rear room up stairs; it went with the store as a sleeping room. I didn't make any use of the cellar. It went with the store. I didn't consider it of any value; it was of no use to me.

JOHN ELKINS.

357 *Deposition of H. S. Durand.*

APRIL 20TH, 1874.

Present, same counsel before named.

HENRY S. DURAND, being duly sworn as a witness on part of the defendant, deposes and says:

I am 57 years of age. I reside in Racine, and am in the insurance business; have lived in Racine nearly 31 years. I know the defendants Blake & Elliott, and Richmond W. Howland. I knew Isaac Taylor in his life-time. I knew him from the fall of 1843 until he died, during the war. I was very intimately acquainted with him. He was my next-door neighbor. I know the building in Racine, known as the Howland block. I have known it since its erection. I had a general knowledge of the value of real estate in Racine, used for business purposes in the years 1860, 1861, 1862, and 1863. Prior to those years, I owned and had control of real estate in that city of the property on the corner of Wisconsin and 3rd sts., and other places on Wisconsin street, and several other places in the city—ten or twelve pieces.

Q. What was the state of the market in Racine in the years 1857, 1858, and 1859 for real estate?

A. After the fall of 1857, and during those years and thereafter, the market was entirely unsettled, and real estate was very much depressed.

Q. What was the demand for real estate for investment in Racine, and what was the state of the market there in 1860, 1861, 1862, and 1863? State fully.

358 A. I should say that during all that time that there was no demand for real estate—business property particularly—for investment, and if sold at all, it was sold at very low prices—very much less than the improvement cost, if it was improved property. It was difficult to sell at all for cash.

Q. Have you knowledge of any sales made in or about those years? If so, name them with prices at which they were made, comparing such prices with the cost of improvements.

A. I had a block of brick buildings on the corner of Main & Third streets, which with the ground cost me about from $22,000 to $25,000, not less than $22,000, which I tried very hard to sell, to protect a mortgage of $8,000, and to save something over, but was not able to do it, and it sold for something less than $8,000, at auction, on foreclosure of that

mortgage. I had also a half interest in property on corner of Wisconsin and Third streets with a large warehouse on it, that cost me over $12,000. That was, also, sold on a foreclosure of a mortgage, I believe, for less than $5,000. I knew of another piece of property known as the Baker House—hotel—a four-story brick building that, I think, sold for less than $8,000 about that time to Mr. Huggins. The property that I named above as costing me $22,000 was a three-story brick building, cellar under the whole, finished into two stores below—one 22 x
359 80, the other 20 feet by 80, and about 18 feet by 60, finished throughout, above for offices and rooms—the bank vault carried up to the second story—part tin roof, two flights of iron stairs on the outside, two hoisting-machines, and all very thoroughly and substantially built.

Q. State whether or not in the years mentioned there was a large amount of business property in Racine under mortgage, and whether mortgages were being foreclosed. If so, to what extent?

A. There was. I couldn't say to what extent mortgages were being foreclosed, but to a large amount.

Q. State fully to what the depressed condition of real estate, and its value in Racine in the years mentioned, was attributable.

A. In the fall of 1857 there was a general revulsion in business throughout the country, which depressed real estate nearly everywhere. The city of Racine had incurred a large indebtedness for the building of a railroad—of $300,000, and for other purposes about $100,000 more. In 1859 the railroad company failed; the $300,000 stock in the same owned by the city became worthless. The business of the town fell off very rapidly—the mercantile & produce business. Money was very scarce, and there was a general discouragement of the people in reference to the future of the town. Quite a good many business men moved
360 away. The interest on the debt was not provided for, and it was increasing very rapidly, and it was apparent at about that time that it never could be made much of a produce-market or a trading point, or it was felt that it would not be—that, with the war, with its uncertainty, were among the things that depressed property.

Q. During those years was there difficulty in borrowing money secured by mortgage upon real estate in Racine?

A. I couldn't answer that of my own knowledge.

Q. When did real estate in Racine for business purposes begin to rise in value, and to what extent, and under what circumstances?

A. I think the rise in real estate was comparatively small, until the people started to liquidate the city indebtedness, and there was considerable effort and success in the increase of the manufacturing business of the town, and after the indebtedness was largely compromised, and manufacturing business improved, there was renewed confidence in the future of the town, and real estate of all kinds improved some, but I think mercantile property, *of* stores and business property of that kind, has improved the least up to this time; and I know of very little that, I think, would sell to-day for anything near what it cost. There was very little improvement until after the close of the war.

361 Q. What, in your opinion, was the fair and reasonable value of the Howland block property in April, 1863, for investment, at a cash sale?

A. I must say that I think it would be entirely nominal. There were some things about it just then—its occupation—which gave it a little more comparative value than some other property. The nearest I could express an opinion would be at the wide range of from $8,000

to $12,000, depending, in my judgment, upon other interests which a purchaser might have had in the city. I heard at the time what it sold for. It did appear to me at the time that it was comparatively a full price.

Q. How did its value at that time, in your opinion, compare with its cost?

A. The cost of such property had fluctuated since that building was built. If built in the early part of 1857, it cost, I should think, about the same as it would in 1862 or 1863, but I think such a building could have been built in 1862 or 1863 for about $16,000.

Q. What, in your opinion, is the fair saleable value, for investment, of that property at this time?

A. My opinion would be not to exceed $15,000.

Q. Who had control and management of the property in 1862, and up to April, 1863?

A. I can't be precise as to date, but Isaac Taylor owned it about that time, or had control of it.

Q. What were the business habits of Isaac Taylor and what was his character and characteristics as a business man? State fully.

362 A. He was a very sharp, thorough, careful, exacting, cautious, but a very honorable & honest business man.

Q. What were his habits in the matter of making agreements, & particularly as to having them reduced to writing?

A. All I can say is that he was an unusually particular man in all business transactions. He was what we call a very exact man. I couldn't state of my own knowledge as to habits in reducing agreements to writing, as my dealings with him were mainly in a mercantile way.

Q. What first gave character to the Howland building as a business block?

A. I should say that the getting the post-office there, and the city, council chamber, and city clerk's office, were of great advantage to it at the time.

Q. What was M'r Taylor's character and ability for making property productive of income?

A. He had a very peculiar faculty of making property available, and to do so he had large means to aid his tenants. He was a very active man, and a man of influence.

Q. Where was the centre of business in Racine when you began business there, and what changes have since occurred in that respect?

A. It was on the west side of Main street, between Third & Fifth streets, but from about 1855 it began to draw southward of 5th st. and on to 6th street.

Q. In 1862 and 1863 where was the centre of business in Racine, and where is it now?

A. On Main st. It was mainly between 4th & 6th st's, and

363 on both sides of Main st., between 4th and 5th street, and very largely on 6th st., and it so remains now.

Q. On which side of Main st., between 4th & 6th streets, has the main part of business been, and is it done?

Q. Until within about two years past the business was much larger on the west side; during the last two years I think there has not been very much difference, particularly the last year since some new stores have been added on the east side.

Q. On which side of the street are the dry-goods houses?

A. I believe they are all on the west side.

Q. How, in your opinion, do the Howland block and the Huggins House (formerly the Baker House) compare in cost and value?

A. I think the Baker House must have cost rather the most, but I think the Howland block now is worth the most as an investment.

Q. How, in your opinion, would the removal of the post-office from the Howland block affect its rental and saleable value?

A. I think it would injure it and reduce its rental value.

Cross-ex'n:

Q. What is the character of the location for business purposes, of property on the corner of 3rd & Wisconsin street, and 3rd and Main streets, as compared with the business property of Main st. between 4th and 5th streets?

A. For stores and mercantile purposes the corner of Main & 3rd
364 streets is not as good. The corner of 3rd & Wisconsin st's was never used for mercantile purposes.

Q. You say that property on the corner of 3rd and Main st's is not as good for mercantile purposes; is it as good for any other purpose?

A. I don't think it is for anything it is adapted to. It would be for manufacturing purposes.

Q. What would be a fair estimate of the difference in the annual rental value of property situated on the corner of 3rd and Wisconsin st's, 3rd & Main st's, and property of a similar character on Main st. between 4th and 5th st's?

A. There would be no criterion of judging, for mercantile purposes, between the property on cor. 3rd & Wisconsin st's, but as between cor. 3rd & Main st's, there is not a very great difference, and for some kinds of mercantile business I don't know that there would be any difference, but as an investment for rental purposes, I think the location of the Howland block at present would be worth 33⅓ per cent. the most.

Q. What amount of annual rent could now be procured from the property on corner of 3rd & Wisconsin st's, which you spoke of as having purchased, provided it were in the same situation or condition now as then?

A. I couldn't give any intelligent answer, as I am not familiar with the rentals in the city. I was thinking of cor. Main & 3rd st's in above answer. The former building on cor. of Wisconsin & 3rd st's, used for a grain-warehouse was burned, and the ground is now
365 occupied as a linseed-oil mill, not rented, but occupied by the owners. If the storehouse stood there now there would be scarcely any use for it as a storehouse, but would be adapted to manufacturing business; but what it would rent for I couldn't say.

Q. Didn't the value of business property as an investment in 1862 and 1863 depend upon the amount of rents that it would produce?

A. I think the amount of rents did give it its temporary value.

Q. What amount in annual rents should the Howland block have produced in 1862 & 1863 to have made it a good investment at $10,000 cash?

A. In my opinion property at that time, used for the purposes then used as the Howland block was, should have a prospect of a permanent rental of from $2,500 to $3,000, with taxes & insurance, wear & tear.

Q. What difference would you make in the price of the property as an investment in 1862 & 1863 between a cash payment of the whole price and a payment ¼ down and the balance in equal annual payments of say $1,000 until paid, with interest at seven per cent. per annum?

A. At that time I should think there would be at least a third difference, as money was worth & could be invested.

Q. Then what, in your judgment, would have been a fair price for this property in 1863 upon the terms last supposed—that is, ¼ cash and the balance on the time above stated?

366 A. My answer is that to a responsible party undertaking to try it on such terms, with the then value of cash money, it would be a better operation to pay $13,000 or $14,000 for any property or for any real estate than $10,000 cash down. That would be my opinion.

Q. I understand your view to be, in case the purchase-money was to have been paid in cash, that the prospect of the permanent rental value should have been sufficient to have paid the whole purchase-price in four years or less, setting aside the question of taxes, insurance, and repairs. Should business property have had the prospect of paying for itself in that time to have made it a good paying investment in 1863?

A. That was not my view; but the risk of purchasing property in Racine, in the then condition of things referred to in my direct examination, together with the great value of money at that time and the opportunities of investing in real estate, that, and in view of the rapid depreciation of a building used as that was and must be, to make it pay, I think the gross rental should be at least 25 per cent.

Q. You spoke of M'r Taylor's character. Wasn't his character such that men who knew him well would rely upon his keeping his word in any business transaction?

A. I should think it was; I should say so.

Q. Wasn't he particularly and well known as such a man as we generally speak of as a "man of his word"?

A. He was.

367 Q. Did you have considerable dealing with him?

A. I did—in previous years.

Q. Were any of your dealings with him ever reduced to writing & signed by you & him?

A. He has frequently given me notes; no other, that I recollect. I sold him goods and charged them to him.

Redirect ex'n:

Q. Is the building referred to, on the corner of 3rd & Main st's, occupied for business purposes?

A. It is.

Q. What effect in 1863 or 1864 would the removal of the post-office & council-room from the Howland building have had on its rental & saleable value?

A. It would be merely an opinion. It would be difficult to say, but I should think it would have made $1,000 a year difference in rental value, it depending somewhat on where the post-office should be removed to. I don't think it would make so much difference in the saleable value, as the location of the post-office in that town is always an uncertain matter.

Q. What difference would you make in the price of the property as an investment in 1862 or 1863 between a cash payment of the whole price on a sale to Blake & Elliott and the payment of ¼ down and the balance in instalments of $750.00 each, payable every 6 mo., with 7 per cent. interest, and running five years, and secured by Blake & Elliott's note, with mortgage on the property?

368 A. I should make only, in that case, the difference in the value of the money, with no regard to the property.

Q. Then do you mean that in a sale of the property to Blake & Elliott on the terms last stated you would make a difference between that and a cash sale to them of three per cent.—the difference between 7 and 10?

A. No, sir; I don't mean that. I mean as a seller I should make all the difference between the 7 per cent. int'st and what I could use the money for at the time, and as a buyer I should make the same difference, or nearly so.

HENRY S. DURAND.

369 *Deposition of Cha's L. Bunce.*

Circuit court of the United States for the eastern district of Wisconsin.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT. } In equity.

Deposition of Charles L. Bunce, a witness on behalf of the defendants in the above-entitled cause, taken pursuant to notice given, before Edward Kurtz, on' of the examiners in chancery of said court, at his office, in Milwaukee, Wis.

MILWAUKEE, *June 1st*, 1874.

Present: D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

Examined by Mr. Dyer:

And the said CHARLES L. BUNCE, being duly sworn, deposes and says:

I am 50 years of age. I reside at Racine, and am a fanning-mill maker by occupation. Am in the employ of M'r Blake, and have been for between twenty-five and thirty years. During part of that time I was in the employ of the firm of Blake & Elliott—some twelve to fifteen years. I knew Isaac Taylor in his life-time. I was present at a conversation between M'r Isaac Taylor & Mess. Blake & Elliott, concerning a sale to them of the Howland block, in Racine. The conversa-
340 tion was held in the shop, in the second story.

Q. State what transpired and was said between the parties on that subject, at that time, so far as you now can remember the same.

A. M'r Taylor came into the shop in the morning, came up stairs—M'r Blake was not there—and he spoke to M'r Elliott and said, what about buying that property, or how is it about buying that property? M'r Taylor said, I suppose M'r Blake has spoke to you about it. M'r Elliott says, how about the title? M'r Taylor says, good. At that time M'r Blake comes in. M'r Blake & M'r Taylor sat down on a saw-horse near me, and M'r Elliott went away to another part of the shop. M'r Taylor then commenced figuring the rent of the building, and he figured the rent at $1,700. M'r Taylor says to M'r Blake, you see it is a good investment setting aside the rise in the value of the property. They all then left the shop. I do not recollect anything else that was said.

Cross-ex'n:

Q. When M'r Taylor said to M'r Elliott, I suppose M'r Blake has spoken to you about it, what did M'r Elliott answer?

A. I have no recollection.
Q. Did he convey the idea, according to your recollection, that he had spoken to him, or that he had not?
371 A. From what was said my impression was that he had spoken to him about it.
Q. What was your part of the business in the shop?
A. I was foreman.
Q. Was the machinery in operation at that time?
A. No, sir.
Q. How do you come to recollect that fact?
A. Because I was at work at the bench.
Q. How near the parties that were having this conversation?
A. Probably three feet or four feet.
Q. In what part of the room did it take place?
A. Nearer the front than the rear—near the centre.
Q. When M'r Elliott went away as you stated, to what part of the building did he go?
A. I think towards the rear end.
Q. How long did he remain there?
A. I can't tell you. I don't recollect what became of him. Think he did not come back & take part in the conversation.
Q. Do you think you have stated all that took place at that conversation?
A. All that I recollect.
Q. Hav'n't you considered pretty carefully as to what was said in that conversation, recently?
A. Yes, sir; I have.
Q. Hav'n't you talked the matter over with Blake & Elliott to refresh your recollection on the subject?
A. I have.
Q. How many times?
A. Not more than once.
372 Q. When was that?
A. I couldn't tell you when it was.
Q. About how long ago?
A. Since the commencement of this suit.
Q. With which one of them?
A. I think with both of them.
Q. Where was it?
A. I guess in the office or shop—I could not tell which; it might have been on the sidewalk.
Q. Can't you tell more definitely than that?
A. Well, I think it has been spoken of in all the places.
Q. In all places at the same time?
A. No, sir; the only time my attention was called to it for the purpose of refreshing my memory, was on the sidewalk.
Q. On the sidewalk where?
A. In front of Blake & Elliott's office.
Q. Who was present?
A. I guess M'r Fish & M'r Elliott.
Q. Who was present at the conversation about it in the office?
A. Fish, I guess, & M'r Elliott.
Q. Who was present at the conversation in the shop?
A. Well, I don't know that there was any conversation about it in the shop—it was only mentioned there.
Q. In any of these conversations with Blake & Elliott, did you tell

either of them what you understood the facts were as to the conversation you have testified about?

A. I think I told M'r Blake in the shop that I recollected M'r Taylor's coming in there to sell the property.

373 Q. How did you come to tell him that?

A. He said M'r Howland had sued him for the property.

Q. And did he state to you the circumstances about that conversation as he understood it?

A. He did not, to my recollection.

Q. Neither M'r Blake or M'r Elliott have at any time told you how they understood that conversation, have they?

A. Yes; M'r Elliott did in front of the office.

Q. Did he state the conversation as he understood it substantially as you have stated it here?

A. I can't tell you whether he did or not.

Q. Was there anything in the conversation as he stated it to you, as you now recollect his statement of it, which differs from the conversation as you have now stated it?

A. He stated some conversation as having taken place between him and M'r Taylor, when M'r Taylor first came in, that I didn't recollect.

Q. What was that?

A. In regard to the title or what his title was.

Q. Is that all the difference?

A. I think it was; I don't think M'r Elliott heard that part of the conversation between Taylor & Blake on the saw-horse.

Q. Is there anything in the conversation as you have stated it here different from the conversation as Elliott stated it to you?

A. I can't tell you that there is; I don't recollect anything.

374 Q. Where were you standing when Taylor came into the shop?

A. The stairs came up about the centre of the shop, east & west, and I was standing at the bench just north of the stairs on north side of the shop.

Q. How near M'r Taylor were you when he first came in?

A. Probably fifteen feet.

Q. How near M'r Elliott were you?

A. About fifteen feet; M'r Elliott stood right by the stove near the head of the stairs; M'r Taylor came right up to him.

Q. Where did they go then?

A. They stood right there until Blake came in.

Q. Where were you in the mean time?

A. I was at the bench; about fifteen feet from the stove; it might not be over twelve.

Q. And did you remain there at the bench during the whole conversation?

A. Yes, sir.

Q. Were you at work all the time at the bench?

A. Yes, sir.

Q. When Blake came in where did the parties go?

A. M'r Elliott went, I think, to the rear of the room, and M'r Taylor & Blake took seats on the saw-horse near me.

Q. Were you near enough to the parties from the time Taylor first came into the shop to hear what the parties said?

A. I think I was, to hear any ordinary conversation.

Q. Who else was present at this conversation?

A. Several men in different parts of the shop.

375 Q. Who were present during the conversation between Blake & Taylor near your bench?

A. There was 'one very near; no one within twenty feet; a man by the name of Thorkelson was within about twenty feet; he was at work at his bench.

Q. Where was his bench situated?

A. In the S. E. corner of the shop.

Q. Wasn't his bench by the head of the stairs?

A. No, sir.

Redirect ex'n:

(By Mr. Fish.)

Q. When you were talking with M'r Elliott & myself on the sidewalk in front of the shop, were you not asked by me to state your recollection of the conversation?

A. Yes, sir.

Q. Did you not then state the conversation, as you have now stated it, before M'r Elliott told you his recollection of it?

A. I did.

Recross ex'n:

Q. When did this conversation, at which M'r Elliott stated the original conversation to you, as he understood it, take place?

A. I can't tell you; maybe four weeks ago; it was at the same time & place of the conversation in presence of M'r Fish. The shop stands east & west, lengthways, and is some 70 feet long by twenty feet wide.

C. L. BUNCE.

376 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of John Kranz, Albert G. Knight, George T. Erskine, John Elkins, Henry S. Durand, & Charles L. Bunce were taken before me pursuant to notice duly given, and by consent of the counsel of the parties; that I was attended by the same counsel at the times and place as stated in the captions of said depositions, and by the said witnesses, who were of sound mind & lawful age; and that said witnesses were by me first duly & publicly sworn to testify the truth, the whole truth, and nothing but the truth; and their depositions then by me reduced to writing in the presence of said witnesses respectively and from their statements, and after carefully reading the same over to said witnesses respectively they subscribed the same in my presence.

I further certify that the exhibits marked by me Def't's Exhibits Nos. 1 to 12 inclusive were produced before me, and are herewith returned separately. I have retained said depositions & exhibits in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said depositions and captions named, nor in any way interested in the event of said cause.

377 In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery U. S. Cir. C't E. Dist. Wis.

378 *Deposition of Lucius S. Blake.*

Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Lucius S. Blake, taken on the part of the defendant in the above-entitled cause, pursuant to notice given, before Edward Kurtz, on' of the examiners in chancery of said court, at his office, in Milwaukee, Wis.

WEDNESDAY, *April 15th*, 1874.

Present: D. G. Hooker, counsel for complainant; C. E. Dyer & J. F. Fish, counsel for defendants.

And the said LUCIUS S. BLAKE, being duly sworn on behalf of defendants, deposes & says:

I am one of the defendants in this suit; am 57 years of age; I reside in Racine, and have resided there since 1836; my business is manufacturing; I know R. W. Howland; have known him twenty years, I should think; I knew Isaac Taylor in his life-time; was acquainted with him ever since he came West, about twelve years prior to his death, I should think—maybe fifteen; I know Horatio T. Taylor, and have
379 known him 25 years; am acquainted with lot 12, in block 18, in the city of Racine, on which the Howland block stands, and have known that block ever since it was built; I have had knowledge of real estate in Racine for 30 years; I have bought and sold property there; have bought more than I have sold, but have sold considerable; in 1862, 1863, & 1864 the real-estate market there was very low in price; I have known of sales of property there for less than the cost of the building; I knew of the sale of the house now occupied by J. I. Case; I believe it was sold for $6,500; I think $12,000 would have been a fair valuation for that property in 1856; now I think a fair valuation of it would be about $20,000; in 1863 the McClurg building would not have brought, I think, more than 50 per cent. of its cost; it is on the east side of Main st., corner of Third; it is considered the finest building in the city; I have been engaged to some extent in erecting brick buildings for stores in Racine, and am acquainted with the cost of building; I do not think there would have been a great deal of difference between the cost of the Howland block and the cost of the Huggins House; there is a difference in the finish of the two; the Howland block is finished off for stores on the first floor, and above for offices on the second floor; a printing office on the third floor, which is divided into three rooms; & the fourth story is in three rooms and an ante-room,
380 and occupied as a Masonic hall; the Huggins House is finished for stores on first floor, sam as the Howland block; the second floor, and all above it, is finished for hotel purposes; the inside of the Huggins House I should think more expensive than the inside of the Howland block, by reason of its being cut up into small rooms, and there being more doors & windows in it; the outside of the Howland block is a more expensive finish than the outside of the Huggins House, that is, the front of the block. I know of the sale of the building in which the Argus office is situated; don't know the particulars of the sale.

Q. Did you have any conversation with Isaac Taylor & R. W. Howland about joining Horatio Taylor in taking title to the Howland block for the benefit of Howland?

A. Not when we were all present at one time.

Q. Did you have any conversation relative to taking the title to that property; if so, when was it?

A. I did with Isaac Taylor & with Horatio Taylor; it was sometime in the spring of 1862, in May or June; it was before the foreclosure sale to M'r Taylor.

Q. Did you talk with M'r R. W. Howland about it?

A. I think I did in presence of Horatio T. Taylor at H. T. Taylor's store.

Q. What was the conversation, as near as you can state it, & what were the negotiations between you?

381 A. M'r's Howland had told me that Horatio Taylor would join me in the purchase of the property, they thought, if I would assist. I think it was the next day that I met M'r Howland and M'r Horatio Taylor at his store, and there the matter was talked up. There was no agreement come to at that time, and in talking with M'r Horatio Taylor, in the absence of M'r Howland, M'r Taylor told me that he had finally made up his mind to have nothing to do with it, as he did not like the arrangement. There the matter ended, as far as that negotiation was concerned.

Q. What was the negotiation between Taylor, Howland, and yourself at that time?

A. I think that we were to advance $2,000—that is, $1,000 each. We were to take the title at the foreclosure sale, and M'r H. T. Taylor was to take charge of and look after the property. The understanding was then that we were to take the property, hold it, and collect the rents a certain number of years—I think it was five, and it might have been six—and give M'r Howland that time to redeem it—Mr. R. W. Howland.

Q. Was there any talk or conversation that the arrangement was made for the benefit of Eugene Howland?

A. No, sir; I did not know Eugene Howland in the transaction at all.

Q. After this interview at H. T. Taylor's store, did you have any other interview with H. T. Taylor & R. W. Howland?

382 A. Not when we were all three present. I had talk with H. T. Taylor, but not in presence of Howland.

Q. Did you have any conversation with R. W. Howland about making the same kind of an arrangement with one John W. English?

A. No, sir; not to my knowledge.

Q. In the talk with H. T. Taylor & R. W. Howland, what was said about the rate of interest?

A. I don't now recollect.

Q. After the sale on the foreclosure in June, 1862, did you have any talk with H. T. Taylor and R. W. Howland, or either of them, about taking the property & carrying it for the benefit of Howland?

A. I never did.

Q. Do you recollect any of the reasons given by H. T. Taylor for not going into the arrangement & making the purchase for the benefit of Howland?

A. I think he wanted the title to the property in himself.

Q. Did you have any talk with Isaac Taylor or with R. W. Howland, after the foreclosure sale, about taking the title to the property for the benefit of R. W. Howland or Eugene Howland, or for any other person than yourself and M'r Elliott, when you bought it?

A. I did not, according to my recollection; and I think I should recollect it if I had. I am certain I did not.

Q. Did you know that Isaac Taylor had agreed with R. W. Howland to bid in the property, for the benefit of Eugene Howland, at the
383 time you & M'r Elliott made the purchase of the property?

A. I did not.

Q. Did you hear from any source that Isaac Taylor had made an agreement to take the title to the property through the foreclosure, and hold it until the rents should pay the debt, & then deed it to Eugene Howland?

A. I did not.

Q. Did you know at the time you made the bargain that Isaac Taylor had anything less than an absolute title in fee to the premises?

A. I did not. He said that he had a title to the property, & would give a warranty deed. He said he had paid up all the taxes, and the title was perfect in him.

Q. Did you agree with R. W. Howland that you & M'r Elliott would buy this property from Taylor & hold it until the rents should pay for the property and the improvements on same, and that you would then deed it to Eugene Howland?

A. I did not.

Q. Did he ever request you to do it after Taylor bought it at the foreclosure, or did you know from him or any one else that he claimed any interest in the property after the foreclosure sale, and before you made the purchase?

A. He did not. and I did not know that he claimed any interest in the property after the foreclosure sale.

Q. Did you know, or had you ever heard, prior to your purchase, that Isaac Taylor had an agreement with Eugene Howland or Richmond W. Howland, as agent of Eugene Howland, or otherwise, that Taylor
384 was to hold the property in trust for Howland until the rents of the property should cancel the indebtedness due from Eugene Howland to Taylor, and that when such indebtedness was paid the property was to be reconveyed to M'r Howland?

A. I did not.

Q. About what time was it that you bought this property from Taylor?

A. I think in April, 1863. We paid ten thousand dollars for it, $2,500 cash, and notes for the balance with interest, and we afterwards paid the notes.

Q. At the time of that purchase did you understand that you were buying that property for the use or benefit of any persons other than M'r Elliott & yourself?

A. I did not.

Q. Did you know Eugene Howland?

A. I presume I met him, but don't know him. I never did any business with him.

Q. Where was the bargain made between M'r Taylor and M'r Elliott & yourself?

A. At our shop in Racine.

Q. Who was present at the time the bargain was made?

A. M'r Elliott, Isaac Taylor, & myself, and it was in the room occupied at the same time by some of our workmen—two of them—M'r Bunce, and a man by the name of Thorkelson.

Q. Had M'r Taylor proposed to sell you the property before you met at the shop?

385 A. Yes; the day before he spoke to me about it; I think he spoke to me twice about it.

Q. Did he give any reason' for wanting to sell the property, & what were they?

A. Yes, he did; he said he wished to invest his money in Chicago, where he was about building an elevator.

Q. Were any of the notes discounted which you gave to M'r Taylor for the property, for the reason that he wanted them oney to invest in the elevator?

A. I couldn't swear that they were all, but I think some of them were. There were some deductions on interest by reason of some of them being paid before due.

Adjourned to Tuesday, April 21st, 1874.

TUESDAY, *April 21st*, 1874.

Present, same parties before named.

Q. Did you have any conversation with Richmond W. Howland about buying this property from Taylor some one or two days before your purchase of it?

A. I did not.

Q. M'r Howland states in his testimony that you had been talking with him for ten months before you purchased the property about carrying the property for Eugene Howland; is that true?

A. That is not true.

Q. Do you know M'r's R. W. Howland?

A. I do.

386 Q. Did she live in your house at any time?

A. She did. I should think from 6 to 8 months—not to exceed ten, I think.

Q. Before you purchased this property, & after the sale on foreclosure to Taylor, did you have any talk with Richmond W. Howland about the property?

A. I did not.

Q. Did you at any time agree to buy the property from Taylor and hold it until the rents should pay for it & then deed the property to Eugene Howland?

A. I did not.

Q. Did any person ever request you to purchase this property at the foreclosure sale with H. T. Taylor, or any other person, and hold it for the benefit of Eugene Howland.

A. They did not.

Q. At the time of the conversation between M'r's Howland & yourself, & between H. T. Taylor, R. W. Howland, & yourself, for whose benefit was the contemplated purchase to be made?

A. For the benefit of R. W. Howland; that was the understanding.

Q. State the arrangement with reference to the brick-yard spoken of by M'r Howland.

A. I bought the property on a foreclosure of a mortgage, given, I think, by M'r Jenks & M'r Howland's brother, Jepth. It was foreclosed by Moses M. Miller; M'r R. W. Howland was making brick on the property at the time, or had it in charge, and it was to be sold. I think the day of sale, or a few days before, he came to me, and wished
387 me to let him have the money to pay the mortgage, or bid off the property at the sale, as he had personal property there, and was making brick, and thought he could pay for it. I don't recollect

the exact time he wished me to hold it. I bid off the property for somewheres about $300 to $500 I think, and held it about seven years. He never paid me for it, and I sold it to M'r George Q. Erskine. I think there was a surplus after paying the money I had advanced on it of $60 to $70, and I accounted to M'r Howland for that surplus, whatever it was.

Q. Did you ever agree with Eugene Howland, by Richmond W. Howland, that you & Elliott would keep an account of the rents of the Howland block, the expense of repairs, and the amount paid for insurance & taxes, & would reconvey to Eugene Howland when the property should be paid for?

A. I did not.

Q. Did you ever keep any such account?

A. I have not.

Q. Did you personally know Eugene Howland?

A. I think probably I have seen him, but do not know him.

Q. M'r Howland says that he met you back of the shop, under the old shed, and there talked with you, and you agreed to take the property and carry it for Eugene Howland; did you ever have such conversation with him?

A. I never did.

388 Q. M'r Howland says that you came to him in the fall of 1858 and said that Osborn & Osgood had a demand against Eugene Howland for brick, & that you could make arrangements with them to get it, and would if he, Richmond W. Howland, would make a personal matter of it and see that it was paid; state how that transaction was.

A. I don't recollect how it was. I know there was a transaction with Osborn & Osgood about a note, but cannot state whether it was signed by Eugene or Richmond W. Howland.

Q. Did you ever hold a note against Richmond W. Howland for material that went into that building?

A. I did; I think for between $400 & $500 dollars. It has not been paid. I have the notes now. I got the notes from Richmond W. Howland. I furnished the material (brick) for which the notes were given. A part of this transaction, I think, grew out of the one with Osborn & Osgood.

Q. Did you have the $2,500 on hand that you paid Taylor at the time you bought the property from him?

A. I think not; we got it from the bank, on Blake & Elliott's note.

Q. Before the commencement of this suit did you ever hear anybody claim that Taylor bid in this property for Eugene Howland?

A. I never did.

Q. What is the fair market value of that block to-day?

A. I don't think the block would fetch $15,000 in money to-day.

389 Cross-examination:

Q. When was the foreclosure sale to Taylor made?

A. I think it was in the early part of 1862.

Q. You have said that you never had any conversation with H. T. Taylor or R. W. Howland after that sale was made; are you sure that you knew at the time when the sale was made?

A. I think I knew the month the sale was made. I might not have known the day; I think likely I did. I know we had been talking about the sale when we were trying to fix up a trade between H. T. Taylor, R. W. Howland, & myself.

Q. Then may you not in fact have had conversations with both H. T.

Taylor & R. W. Howland in reference to taking the title to the property after the foreclosure sale was made?

A. I don't think we had any conversation after the sale about taking the title. We were to take the title at the sale if the arrangement went on between H. T. Taylor, R. W. Howland, & myself.

Q. And do I understand that you never had any conversation with H. T. Taylor or R. W. Howland in reference to taking the title in any other way than at the foreclosure sale?

A. I think we never did.

Q. How positive are you about that?

A. I am positive that when the property was sold on foreclosure the negotiation stopped.

390 Q. And that there was no conversation between you and either of them, subsequent to the sale, on the subject?

A. Not with reference to furnishing the money and advancing on the property.

Q. Did you have any conversation with either of them after the sale in reference to taking the title in any other way?

A. No, sir; the negotiation stopped at that time. M'r H. T. Taylor made up his mind he would have nothing to do with it.

Q. How many different conversations did you have with H. T. Taylor in reference to taking the title with him?

A. We might have spoken about it two or three times, and possibly more.

Q. You said these conversations with him were at his store?

A. I said one conversation was at his store.

Q. Where were the other conversations?

A. I recollect M'r Taylor speaking to me about it once at the court-house. Isaac Taylor was not present. R. W. Howland was not present.

Q. Did you have any other conversation at the court house in reference to taking the title when R. W. Howland or Isaac Taylor was present?

A. I think not.

Q. Where did you have a conversation on that subject with H. T. Taylor, at which R. W. Howland & Isaac Taylor were present?

A. I don't think we ever had such a conversation when all four of us were present.

391 Q. Where did you have such a conversation with H. T. Taylor at which Isaac Taylor was present?

A. I think it was at H. T. Taylor's store, or on the walk in front of it.

Q. Where did you ever have such a conversation with H. T. Taylor at which R. W. Howland was present?

A. I think at Taylor's store.

Q. Then did you have more than one such conversation with H. T. Taylor at his store?

A. I had two conversations with M'r Taylor at his store, and I don't know but possibly he spoke to me three times about it there.

Q. Where was H. T. Taylor's store at that time?

A. On the corner of 6th & Main streets.

Q. Did Taylor have a store at the time he was sheriff?

A. Yes; he owned a store then. I think he had a partner.

Q. Was H. T. Taylor engaged in carrying on the business of a store in Racine during the time he was sheriff of Racine County?

A. I think he owned the store. I think the business was carried on under the name of Taylor & Smith.

Q. Did H. T. Taylor make this store at that time his place of business?

A. It was a public place where we dropped in, and I think he was in trade at that time.

Q. Do you know S. F. Lefler, formerly of Racine, & now residing in Chicago?

A. I do.

Q. Was he formerly in your employ?

A. Yes, sir.

392 Q. When did he leave your employ?

A. I can't tell now. Some years ago.

Q. Did you have a conversation with him, after you took a deed of this property, in reference to the manner in which you took the title, or were holding it?

A. I did not to my knowledge.

Q. Didn't you have such a conversation with S. F. Lefler soon after taking the title, in which you told him that you and M'r Elliott were carrying the Howland block for Howland, and that he was coming out all right in a short time, or words to that effect?

A. I never had any such conversation with him.

Q. Do you know A. P. Dickey, of Racine?

A. I do.

Q. How long have you known him?

A. For twenty-five years.

Q. Did you have a conversation with him, after you took the title to the Howland block, in reference to the manner in which you took the title, or in which you then held it?

A. I did not.

Q. Didn't you have such a conversation with A. P. Dickey at Racine soon after you took the title to this property, and didn't you say to him in that conversation that Howland was coming out all right with the Howland block—that you or your firm had taken it off from M'r Taylor's hands and was carrying it for Howland in Taylor's place,

393 and that as soon as the rents paid the indebtedness the property was to go back to Howland, or words to that effect?

A. I did not, nor any similar conversation.

Q. Do you know J. W. English, formerly of Racine?

A. Yes, sir; I used to know him.

Q. Where did English go to when he left Racine?

A. I believe he went to Ripon or near there.

Q. Didn't you have a negotiation with J. W. English after he removed to Ripon for a purchase with him of this same property?

A. I did not.

Q. Didn't you have a negotiation with him looking towards the taking of the title of this property of a similar character to the negotiation between you & H. T. Taylor?

A. No, sir; I never had any negotiation with him.

Q. Didn't you, while in such negotiation with J. W. English, and after the foreclosure sale to Isaac Taylor, say to him, in reply to this question which he asked you, "What will Howland have to show for his interest?" that your word was good with Howland; that you & Howland understood each other, or words to that effect?

A. I did not; never had such conversation with him.

Q. Nor any similar conversation?

A. No, sir; not with M'r English, to my recollection—never.

Q. Would you have recollected it if you had had such conversation?

394 A. I think I should.

Q. How positive are you on that subject?

A. I don't think I ever had any negotiation with him on the subject of taking the property with him.

Q. If you had had such a conversation after the sheriff's sale, and before you took the title from Taylor, would you have remembered it?

A. I think I should.

Q. Do you know M'r Burdick, of Racine, who is a brother-in-law of M'r Charles Shaw, of Racine?

A. I do—have known him 10 or 15 years.

Q. Did you have a conversation with M'r Burdick, after you had taken the title to this property from Taylor, in reference to the manner in which you had taken it or held it?

A. I think I did not.

Q. Didn't you have such a conversation with M'r Burdick soon after you took the title from Taylor, in which you stated to him, in substance, that you or your firm, in one sense, had, and in another sense had not, bought the Howland block; that you had advanced money on it for Howland, but that you did not think he would be able to redeem, or words to that effect?

A. I don't recollect of ever having any such conversation with him on the subject.

Q. Can you say, as a matter of fact, whether you did have such a conversation with him?

A. I say that I have no recollection that I ever did; and if I did, I think I should have recollected it.

395 Q. Do you know A. P. Dutton of Racine?

A. I do—have known him 25 years.

Q. Did you have a conversation with A. P. Dutton, after you had taken the title from Taylor of this property, in reference to the manner in which you had taken the title or in which you held it?

A. I did not; he is a man I have not been on terms with for years.

Q. Didn't you, in such conversation with A. P. Dutton, soon after taking the title from Taylor, say to him, in substance, that you or your firm had taken the property off Taylor's hands, and were carrying it for Howland in Taylor's stead, and that as soon as the rents paid the indebtedness going to Taylor, the property was to go back to Howland, or words to that effect?

A. I say, as I said before, I had no such conversation with him—have not been on terms with him for years.

Q. Didn't you have a similar conversation with him?

A. No, sir; I don't think I ever spoke to him on the subject.

Q. Do you know M'r's Richmond W. Howland?

A. I do.

Q. Did you have a conversation with her on the morning of the day, or the day before, you took the deed from Taylor, in reference to taking the title to the property, or about that time, and before you took the deed, and before you made the final arrangements with Taylor for the deed?

A. I don't recollect exactly when it was; but I recollect having

396 conversation with her at my house about that time.

Q. Did you tell her in such conversation, in substance, that you would take the property of M'r Taylor if he would let it go for the

amount due him, and carry it until the rents would pay the indebtedness, or words to that effect?

A. I did not.

Q. Did you have any similar conversation with her?

A. I did; she asked me if I would not advance the money and take the property for them; I told her I would not do it.

Q. Didn't you promise her, in that conversation, and say to her, in substance, that you would go & see M'r Taylor at once, & report at 3 o'clock that afternoon at her house?

A. I did not, to my recollection.

Q. And didn't you that afternoon, in compliance with the promise you had made in the morning, report to her that you had completed an arrangement, or agreement, with M'r Taylor to take the property, or words to that effect?

A. I think not.

Q. If you had done so, would you remember it?

A. I think I would.

Q. Didn't you, in the interview at which you made this report to her, request her not to trouble or annoy you in any manner about the property until it paid for itself, or was paid for, or didn't you make a similar request of her?

A. I made no such request.

Q. Didn't she, in that interview, after you had made such a request of her, agree, or promise, or say that she would not trouble you in any manner?

397 A. I made no such request, and she made no such promise or agreement.

Q. Didn't you tell her, in that interview, that M'r Taylor told you that you could get along with Howland well enough, but that she, M'r's Howland, would be continually annoying him, or words to that effect?

A. No; I have no recollection of any such conversation.

Q. Didn't you tell her, in that interview, that you would receive money at any time & allow it on the debt, or words to that effect?

A. No, sir; M'r R. W. Howland was owing me $600 or $700 at the time.

Redirect ex'n:

Q. At the time M'r's Howland saw you at your house, for whom did she request you to buy this property & hold it?

A. For Richmond W. Howland.

Q. Did she, or any one else, ever request you to advance the money for Eugene Howland, the complainant?

A. She never did, nor any one else.

Q. State the conversation with M'r's Howland at your house, and who was present.

A. She came up to see if I would not buy the property or advance the money, take the property & hold it for a certain number of years—I dont recollect now the number. I told her, in that conversation, that I would not do it. I told her that M'r Howland was owing me then on a similar arrangement for a brick-yard, and that he never had paid

398 me, and I never would take any more property in that way; and that if M'r Taylor would sell me the property I would buy it, if I could get it for what it was worth. She then said it was lost to them, as Taylor was going to sell it to a party in Chicago, and that if I would buy it, if there were anything made out of it, she would rather I would make it than any one else. That was the drift of the conversation, and

about all that was said at that time. My wife was present at this conversation, and, I think, our hired girl.

(Defendants' counsel object to each & all of the questions put to the witness calling for alleged conversations with S. F. Lefler, A. P. Dickey, J. W. English, M'r Burdick, A. P. Dutton, & M'r's Richmond W. Howland, on the ground that said questions are incompetent & defective in substance but not in form, and 'tis agreed that said objection was made in season.

Complainant's solicitor requests the defendants' solicitors to specify in what respect any of the interrogations above alluded to are defective in substance, so that the defect or defects may be cured if they are of such a character that they could have been cured if the objections had been made at the time the questions were asked, and does not consent that any objection may be raised upon the hearing as to such defect.

Defendants' solicitors respond and specify that the questions do not fix the time or place of the conversation, nor designate as to which Howland the inquiry was made, and that said questions are ob-
399 jectionable for the reason that they call for oral testimony, converting a deed absolute on its face into a trust-deed.

Adjourned to Thursday, July 9th, 1874.

THURSDAY, *July 9th*, 1874.

Present, same parties before mentioned.

Redirect ex'n of Lucius S. Blake resumed.

Q. Did you see the complainant, Eugene Howland, in April last?

A. I did see him.

Q. Where was he?

A. Watertown, Jefferson County, State of New York.

Q. Were you present at a conversation between Eugene Howland & myself at his house the day before his deposition was taken?

A. I was.

Q. What did he say in that conversation about the money that he had put into the block or that he had let Richmond have to put into the block?

(Objected to as incompetent & immaterial, and as not pertaining to any matters disclosed by the cross-examination.)

A. Well, he gave the amount, or the amount he thought he had put in; he said the amount was some sixteen or seventeen hundred dollars. He said he & Richmond did not agree on the amount; Richmond said it was thirteen, but he thought it was more.

Q. What further did he say about the division of the prop-
400 erty in case he recovered in this suit?

(Same objection as last.)

A. He said that if he recovered he should make a disposition of the property; he should give to the people who had claims upon the property their proportion; he said he had assured Richmond of that.

Q. Did you hear him examined the day after, before M'r Ainsworth?

(Same objection, and for the further reason that if he was examined, his examination is the best evidence of what took place.)

A. I did.

Q. Was his examination read over to him carefully after it was taken down?

(Same objection as last before.)

A. It was.

Q. Did he then sign his name to it?

(Same objection as before.)

A. I saw him sign his name to the deposition.

(Defendants' counsel offers in evidence the deposition referred to by the witness.

The plaintiff's counsel makes the same objection as above, and for a further objection that a deposition that has been already taken cannot be offered in evidence before the commission.)

Q. Is the deposition which you have been testifying about the same one that is on file in this case, which is marked "Opened & published May 12, 1874. Edward Kurtz, clerk."

401 (Same objection as before.)

A. It is the same.

Q. Did Eugene Howland answer the several questions in the deposition before the answers were written down?

(Same objection.)

A. He did.

Q. Since the transfer of the Howland-block property to Blake & Elliott, have any repairs been made by them on the building?

A. There have.

Q. At the time of or immediately after your purchase in 1863, were other expenditures made on account of the property by Blake & Elliott?

A. There was.

Q. What amount was expended by Blake & Elliott for repairs & other expenses during the year 1863?

A. As near as we can now ascertain, it was seventy dollars and thirty-two cents

Q. Name the amount expended by Blake & Elliott from year to year for repairs upon the Howland block, beginning with 1864, down to & including 1873.

A. In the year 1864 ..... $595 12
" " " 1865 ..... 423 80
" " " 1866 ..... 94 75
" " " 1867 ..... 62 50
" " " 1868 ..... 210 50
" " " 1869 ..... 63 80
402 In the year 1870 ..... $167 80
" " " 1871 ..... 331 80
" " " 1872 ..... 118 30
" " " 1873 ..... 483 67

Q. Were any portions of those repairs made by mechanics employed by you in your shops?

A. They were.

Q. Have Blake & Elliott kept a strict account of all repairs they have made upon the building?

A. They have not.

Q. Do the amounts which you have given include all repairs of every kind which have been made on the building by Blake & Elliott?

A. I think they do not, sir. I have thought of something to-day which has not been put down. I refer to inside painting in the council-room, and what was called Jayne's office, & painting some partitions. There has been no account taken of the painting of the windows on the north or south sides.

Q. State, generally, the most important repairs that have been made on the building since you purchased it.

A. Well, the roof was the most important. It was covered entirely

new, and the cellar under the post-office—repairing the floor—was another expensive job; taking down east wall & repairing the same; the sidewalks was quite an item; they have been rebuilt three times
403 in front of the post-office since 1863 and twice in front of the balance of the block; taking down & putting in partitions in Advocate office; putting in truss-work. The painting was a considerable item. I think the front of the building has been painted twice since we took the property, & the east end has been painted, a portion of it twice, and once all over, as well as a portion of the brick wall; that on the brick-work was measured by M'r Buffham. The wood-work on the east end has been painted all over twice, and a portion of the wall estimated by M'r Buffham. The store-fronts have been painted three times. In the council-room there has been a new floor, & also in the Advocate office 34 dollars for repairing the roof.

Q. Does the statement now shown you represent, as nearly as you are able to arrive at it, the amounts expended for repairs during the years mentioned and the character of such repairs?

A. It is as near as we have been able to get at it.

Q. What is the fact as to these repairs being necessary & required in order to keep the property up & to make it produce proper rents?

A. We considered them all necessary.

Q. What is the fact as to any of the tenants in the building at any time making repairs in the rooms occupied by them, and the cost of such repairs being deducted from the rents due from them?

A. We have allowed them to do so in several instances.

404 Q. Have you any account or statement of such repairs?

A. We have no statement, any further than what is on the statement which is now before me.

(The statement which is shown the witness is offered in evidence, & is marked "Def'ts' Exhibit No. 14.")

Q. How have you arrived at the repairs described in that statement and the cost of the same?

A. By going over the building with another man with me, and looking up the repairs, and conversing with our tenants what repairs had been done, & at what time they were done, & getting at it by their judgement of the amount they had done, & what we had furnished, & from the foreman in our shop, who had superintended the work.

Q. Have you or M'r Elliott, or either of you, personally superintended any of these repairs as they were made?

A. I have, & so has M'r Elliott. I took down the wall of the east end myself, & weather-boarded it up. I should think it was from 50 to 60 feet high; it was very expensive to put up a staging, & taking down the wall, & repairing the building.

Q. Why was the wall taken down?

A. The water, as it came off the roof of the building, had blown back, under the roof and over the brick, & run down into the wall & frozen, & bursted the wall out, & the occupant' of the building were afraid it would fall, & there was no other way to repair it but by putting in the timber & weather-boarding. The east end of the upper portion of the brick
405 wall, of the first story, after the repairs were made, was plastered with water-lime to make it resist the force of the east wind, & to prevent the water from running into the wall.

Q. Have all the repairs which are enumerated in the statement just put in evidence been actually made?

A. Well, I think they have. I won't be certain as to two or three items in the account. I am not certain whether we built the blinds in

Sanford's office, and, also, in Major Paine's. People have made improvements, & we have taken it out of the rents. The only way we could get at these improvements was by going about the building, as I have stated before, & seeing what had been done, & talking with the tenants.

Q. Were the repairs testified about by M'r Davis & M'r Buffham actually made by Blake & Elliott, or persons employed by them?

A. They were, with the exceptions I have made.

Q. What was the conversation between H. T. Taylor, R. W. Howland, & yourself, as to the compensation which M'r Taylor was to have for taking charge of the building in anticipation of the arrangement about which negotiations were had, as testified to by M'r Taylor?

(Objected to as incompetent & immaterial.)

A. I think he was to have $200 a year. That was the arrangement talked of.

Q. During the last 10 years have you & M'r Elliott been borrowing money at 10 per cent. to use in your business in the woolen mill, & in the fanning-mill business?

406 (Same objection as before.)

A. We have.

Cross-examined by M'r Hooker:

Q. In the first part of this account, marked "Exhibit 14," you have given a particular date to each item; how did you arrive at those dates?

A. That account was kept. I think those charges were put down at the time the work was done.

Q. How were they kept?

A. They were kept on a small book—pass-book.

Q. By whom were they kept?

A. The book was in the office; most of the account is in Elliott's handwriting.

Q. Up to what time were they kept?

A. I can't now state.

Q. Have you got that book?

A. M'r Elliott has it.

Q. How long was this book kept?

A. I can't state; on looking at this book I see that a few of the receipts for rent are in my handwriting.

Q. Was the statement that you have given for the expenditures for repairs taken from this book during the period for which the book purports to contain a statement of them?

A. It was a copy from the book as far as the book carries them; that is, as I understand it.

Q. For the year 1865 the book shows the aggregate expendi-

407 tures to have been 103 dollars and 80 cents; your statement gives for the expenditures for that year at $423.80; what is the difference of 320 dollars made up of?

A. Putting up post & brace partition in Advocate office:

Labor & material	$65 00
Glass partitions in Yout's office	16 00
Window blinds	114 00
" " painting	20 00
Painting east end of block	50 00
" west front	50 00
Cleaning yard & taking away brick	5 00

Q. Did you ever put up the posts & brace in the Advocate office more than once?

A. We did, sir.

Q. How many times?

A. I think two or three times.

Q. What year did you do the first work on it?

A. I think it was in 1865; it might have been 1864.

Q. If the first work was done in 1864, when in your best recollection was the next work done?

A. It might have been done in the same year. I have no distinct recollection whether it was done in '64 or '65.

Q. When was the third time that work was done on that partition?

A. I should think in 1865; it might have been in 1866.

Q. After you did the first work upon the partition, what occasioned the necessity of doing work on it again so soon?

408 A. We were compelled to do it in order to hold our tenants.

Q. What change was made in the Advocate office in connection with that partition in doing the first work upon it that you have stated?

A. In the first place about 20 feet of the brick partition was taken down & a truss put in.

Q. Is that all the work that was done the first time?

A. There might have been more done. I don't recollect of anything else.

Q. What change was made in the Advocate office in connection with that partition in doing the second work that you have stated was done?

A. In all on that partition there was a truss put in the whole length of the building, posts & braced floor repaired; the truss ironed off at the end.

Q. What change was made in the Advocate office in connection with that partition in doing the third work that you have stated was done?

A. Putting in new braces in truss-work, which threw two rooms into one.

Q. Did you point out all these changes to M'r Davis when he made his estimate?

A. I did not; he estimated the work as it now stands.

Q. Why did you not point out all the changes?

A. It was not necessary to point it out to a mechanic. He understood how the work was.

Q. Did you understand that all this work was covered by his estimate—all this work in the Advocate office?

409 A. I understood that the wood-work, & lumber, & material was estimated, but nothing for trouble.

Q. Was everything else estimated beside the trouble?

A. All the truss-work was.

Q. What part of the work was not estimated; that is, the work done in connection with that partition at the three different times you have mentioned?

A. Well, the work was not estimated of drawing the lumber from the dock, & going down & buying it, & drawing it up into the room, as I did not point it out to M'r Davis to estimate.

Q. Anything else?

A. Taking down the wall, 90 feet long, 10 feet high, 12-inch wall. There was no estimate made of that. Sandford did it.

Q. Anything else that was not included in the estimate?

A. I don't know of anything now.

Q. Who did the work that was done first?

A. I think that my hands in the shop done it.
Q. Who did the work that was done the second time?
A. I did it with my own hand, with the help from the shop.
Q. Who did the work that was done the third time?
A. The masonic lodge, & charged it up against us for rent.
Q. How did the masonic lodge have anything to do with it?
A. They have a hall above it, & were afraid it would fall down.
Q. Where is your charge on this bill (Exhibit 14) for doing the work the third time?
410 A. I have not made any charge. M'r Davis estimated it, and it is in the charge of 65 dollars in December, 1865, in Exhibit 14.
Q. Does that amount of 65 dollars cover the amount of work done at the three times?
A. It does the truss-work.
Q. What part of the work which was done at these three different times in connection with that partition is not covered by the item of 65 dollars?
A. I think the getting the material on the ground, & the taking down the wall; all the rest was covered by that item.
Q. I see in this book of receipts & expenses, under date of August 12th, 1864, this charge, "Repairing partition Advocate office, $25." Is not that item of 25 dollars embraced in your bill, Exhibit 14, in addition to the item of 65 dollars, and as a separate charge?
A. I think it is not included in that bill. I think it is another partition.
Q. What work was done on the other partition, which you now refer to?
A. I can't now state.
Adjourned to 9 o'clock a. m., July the 10th, 1874.

JULY 10TH.

Same parties present.
Cross-examination of M'r Blake continued by M'r Hooker:
Q. Who is Menzo Newber?
411 A. I think he is the man who put on the roof.
Q. What kind of roof was it?
A. What we call a tar and gravel roof.
Q. You have charged in this account-book, under date of June 15th, 1864, & also in your bill (Exhibit 14) as paid Menzo Newber, $288.30. Is that the amount paid them for doing that work?
A. That is the amount I think paid to them at that time.
Q. What did that include?
A. That included the work of putting it on & the paper; I do not know whether that included the gravel & hauling it or not.
Q. Is that all that it included?
A. I think that is about all that he done.
Q. What other material was there other than the gravel that went to make that roof?
A. There was the tar or pitch.
Q. Anything else?
A. There was putting in the valleys or gutters, & taking off the old roof & fitting the new material.
Q. Was the old roof taken off?
A. It was cleaned off, and a portion of the roof taken up & gutters put in to keep the water away from the wall.

Q. Was not the new roof laid over the old one, & the old one allowed to remain where it was?

A. A portion of it was.

Q. What portion of the old roof was removed?

A. I can't now state what amount M'r Newber took of the cloth
412 & paper that covered it.

Q. You have charged on your bill (Exhibit 14), under date of June 15th, 1864, the following item: "Paid for tar for roof, $54.00." Is that item on your account-book?

A. I don't see it on the book.

Q. You have charged on the bill, under same date, the following item: "Carpenter-work, roof, $30.00." Does that item appear on the account-book?

A. No, sir, I think not. I do not see it. There is an item for carpenter-work of $20.00. It should be $30.00 according to M'r Davis' estimate. I suppose it is for the same work. It means the same work.

Q. You have charged on the bill, under date of December, 1864, the following item: "Glass & plaster partitions, Hand's office, $82.32." Does that item appear on the account-book?

A. I think not, sir. I do not see it.

Q. You have also charged on the same date on the bill the following item: "Painting & varnish same, $8.00." Does that item appear in the account-book?

A. It does not. That estimate was made by M'r Davis. Neither of the last two items are in the book.

Q. You have charged on the bill, under date of June 5th, 1863, the following item: "Repairing door & whitewashing, $2.75." Is that charge upon the account-book?

A. There is a charge of repairing door, 50 c., & whitewashing $1.25. The clerk in drawing off this item has evidently made a mistake; it should be $1.75 instead of $2.75.

413 Q. You have charged on the bill, under date of October 29th, 1863, for painting, $12.00. Does that charge appear upon the account-book?

A. It does not appear on the book.

Q. You have charged, under date of December, 1865, for glass partitions in Yout's office, $16.00. Who did that work?

A. M'r Bennett, I think, got the work done—the man who was occupying it; it was done, as near as we can get at it, at that date.

Q. When did Bennett commence occupying that office?

A. I can't now state.

Q. When did he leave it?

A. I can't state the time.

Q. You have charged, under date of December, 1865, for 8 sets of inside blinds, $114.00. Who furnished those blinds?

A. The occupants of the building put them in, as I understand it.

Q. Did they all put in the blinds in the month of December, 1865, or did you pay for them in that month, or allow for them in that month in the rents?

A. I can't state at what time they were put in, or at what time they were paid for, or when they were credited up to the occupants of the rooms.

Q. Can you tell by examining your books?

A. No, sir; we have no charge of them on our books, to my knowledge.

414 Q. You have an account with the different tenants on your books, have you not?

A. We have no further account than what appears on that pass-book, to my knowledge, except work that I have done since Blake & Elliott have dissolved.

Q. Won't you examine that book & see if it indicates in any way that any of the tenants have been credited with furnishing inside blinds for their offices?

A. I don't now discover anything on this book.

Q. Is it not a fact that those blinds were in the building when you took the property?

A. A part of them might have been, as I stated yesterday.

Q. Can you say that the inside blinds in any particular office in that building were not in the building when you took it?

A. I can; in Bennett's office, two windows.

Q. Can you state any other office that the blinds were not there when you took the building?

A. I can't now state positively.

Q. You have charged, under date of December, 1865, for painting these blinds, $20.00. Who did that work?

A. It was done by the parties who put them in. It was estimated by M'r Davis. I think the charge is not his estimate. He told me he had overlooked. He told me what it would be worth.

Q. That is all you know of what it would be worth?

A. Yes, sir. I never estimated.

415 Q. You have charged, under date of December, 1865, for painting the east end of the block $50.00; the west end of the block $50.00. Who did that work?

A. I think our men from the shop did a portion of it, and we hired a portion of it done by outside painters.

Q. Who did you hire?

A. I don't recollect. I think M'r Elliott does.

Q. Was that work done in December, 1865?

A. I can't say that it was done in that month; the date was put down from recollection.

Q. Can you say that it was done during the year 1865?

A. I think it was.

Q. This account-book does not indicate that it was done in the year 1865, does it?

A. I don't find the charge upon the book.

Q. Do you find either of the last seven charges for the year 1865 upon the book; being $65, $16, $114, $20, $50, $50, $5?

A. I find none of those charges upon the pass-book.

Q. Does the account-book show any of the charges for repairs subsequent to 1865?

A. The pass-book does not; not that I can find.

Q. Have you any entry in any of your books, or any memorandum, which will show the payment or the amount of either of the charges on this bill for repairs during the year 1866?

A. No, sir; we have not. We kept no account of it at the time the work was done.

416 Q. Can you name the person that performed the work represented by either of those charges of 1866?

A. The gas-fixtures, M'r Blow, I think, put them in; it is mere supposition. That matched flooring, I think, Blake & Elliott's men put in. As to the other items, I can tell. The work has all been done.

Q. How did you get at the prices which you have named for these repairs in 1866?

A. With the assistance of myself, M'r Davis, & M'r Elliott, by going through the building.

Q. How did you determine that repairs were made in 1866?

A. The way we determined we got at it from recollection. Some of it might have been done in 1865; but we think in 1866.

Q. Can you give any more definite or accurate information or statement as to the charges for 1867 than you have given for those of 1866?

A. I cannot, sir; only I have a distinct recollection of the work being done, but can't tell the year. I know I sent a man there to do the plastering & the different repairs.

Q. Can you give any more definite statement or information as to the charges for repairs in 1868 than you have given for those of 1866?

A. I cannot; only I know the work was done. I will not be certain as to the year. We put that down from memory. We had no idea of keeping any account of the work when it was done.

417 Q. Do I understand you to say that you had no idea of keeping an account of the work when it was done subsequent to the year 1865?

A. We kept no account of the work at any time when it was done. We put down—I see M'r Elliott has put down—some work in the pass-book as being done in 1865, & previously.

Q. Does not the book purport to contain a statement of the items for repairs & expenses of that property, with the dates, from the day you took the property up to December, 1865?

A. I think it does in part.

Q. Does it not in whole.

A. I think that there might have been repairs made there that are not on the book, as I see that there is but one charge made on the book in my handwriting for repairs. I do know that there was work done in 1865 that was not charged in the book.

Q. Can you give any more definite information or statement as to the charges made for repairs in 1869 than you have of those done in 1866?

A. I can say that the weather-boarding on the battlement on the roof was done by my men of the shop; otherwise I shall make the same answer as to that of 1866. I am sure I paid Mainland the charge of the bill for work on the roof.

Q. Where did you get this item of money paid Mainland, of $51.00?

418 A. I do not now recollect. I know that he worked then, for I worked with him on the roof.

Q. When did you get this item, this amount?

A. Got it within this last week.

Q. Can you give any more definite statement or information as to the charges for repairs in 1870 than you have for those of 1866?

A. No; I cannot. These repairs were estimated by M'r Davis—most of them.

Q. Can you give any more definite statement or information as to the charges for repairs in 1871 than you have for those of 1866?

A. I cannot give dates as to repairs made in 1871; they may possibly have been made some in 1870 & some 1872, but the repairs were done; most of them are spoken of by M'r Bruce who testified here to-day. In other respects, by looking these items over, I can see that some of them I done myself, and some by men. The repairing of the stairs, & the repairing of flooring, & some of the painting, was done by my men.

The building of the scaffold and taking down the east wall was done by my men with the help of masons. These amounts have been estimated by myself, M'r Davis, and M'r Elliott, by going through the building and looking at the work. The amounts for the charges in 1871 & all through this exhibit, so far as M'r Davis estimated it, compare with his estimate.

419 Q. Can you give any more definite estimate or statement or information as to the charges for repairs in the year 1872 than you have for those of 1866?

A. I can. The partition in back office—Yout's—was put up by my men; the building of the chimney for the engine is here charged $25.80, and I now understand it cost us over $40. Repairing floor in Bruce's store is here; new sidewalk, & paid Jones, repairing roof; these charges are all correct.

Q. Where did you get the amounts of the several charges?

A. I got M'r Jones' amount from his receipt for the work. The amount of repairs for Birch & Bruce, I estimated it; the sidewalk was estimated by Davis; partition in Yout's office estimated by Davis.

Q. Can you give any more definite statement or information as to the charges for repairs in the year 1873 than you have for those of 1866?

A. I can't as to dates; except the post-office cellar was repaired last fall. The repairs in Yout's was done in the spring of 1873. Birch & Bruce, for glass-setting, I know was done; painting ceiling for Birch & Bruce, & putting down gutters is here, which I know was done; floor in old council-room & Advocate office is here; Jones' repair on roof is here, which is correct. The items of charges in 1873 have all been testified to by different witnesses.

Q. Where did you get the amounts?

420 A. The amounts were got by estimate & bills & receipts furnished by the men who did the work.

Q. What amounts did you get from bills & receipts?

A. Got Jones' bill for repairs on roof.

Q. How is it for the charges of 1874?

A. The shutter bill is in the office at home. Ed. Stebbins' is for work referred to by M'r Bruce, hanging doors.

Q. When money has been paid by you or M'r Elliott, or by the firm of Blake & Elliott, for repairs during the several years, will not the books of Blake & Elliott show the dates of the payments & the amounts paid?

A. I do not know whether they will or not; I can't say; the books are here.

Q. Have you examined them to ascertain?

A. I have not.

L. S. BLAKE.

421 *Defendants' Exhibit No. 14.*

Repairs, 1863:

Apr. 18.	P'd drawing mortgage and stamps to Strong Fuller	$6 80
" 19.	Recording deed	80
" 21.	Stamps on insurance policy	2 50
" "	Repairs on McDonald's office	63
May.	Spike in sidewalk	14
" 26.	Cutting hole in partition for stove-pipe	1 00
	Gas-pipes in council-room	1 70

June 5.	Repairing door & whitewashing	2 75		
Aug.	Lumber & labor on roof	5 00		
"	P'd Mainland, work on roof	34 00		
Sept. 12.	Janes, repairs lightning-rods	3 00		
Oct. 29.	" painting " "	12 00		
				70 32
	1864. Repairs:			
Feb'y 17.	Halenbake, shutter-irons	8 00		
May 7.	Hoisting-rope	12 50		
June 15.	Newber, putting on new roof	288 30		
" "	Paid for tar for roof	54 00		
" "	" carpenter-work, roof valley gutters	30 00		
" "	" lumber & nails	20 00		
July 11.	" L. Janes, repairs lightning-rod	2 00		
Aug. 12.	" digging drain	5 00		
	" repairs partition Advocate office	25 00		
	" lumber for same	10 00		
Dec. 7.	" repairs Masonic Hall	50 00		
	Glass & plaster, partitions, Hand's office	82 32		
				587 12
	Painting & varnish, same	8 00		8 00
422	1865:			
Jan'y.	Sidewalk	50 00		
	Chimney repaired	5 00		
	Gas-fixtures	5 00		
	Iron shutters	18 80		
	New window	15 00		
Dec.	Wood-house, council-room	10 00		
	Putting up post and brace, partition in Advocate office, labor and material	65 00		
	Glass partition in Yout's office	16 00		
	Eight sets of inside blinds, windows, & lights, 15 x 22 glass	114 00		
	Painting same	20 00		
	Painting east end of block	50 00		
	" west front of "	50 00		
	Cleaning yard, taking away brick, &c.	5 00		
				423 80
	1866:			
M'ch 5.	P'd Bennett, repairs gas-pipe	10 75		
	Two iron extension chimneys	25 00		
	Cleaning chimneys, different times	10 00		
	Repairing & cleaning cistern	12 00		
	" floors Advocate office	5 00		
	Irons on front window	8 00		
	Cutting out and relaying 400 feet matched flooring	24 00		
				94 75
423	1867:			
	P'd for repairs Bennett's office	12 50		
	Plastering, different times and rooms	15 00		
	Repairing drain several times	25 00		
	" skylight on roof at different times.	10 00		
				62 50

1868:

Painting both ends of building	100 00	
Building sidewalk, lumber and nails for same.	62 50	
Making cover to scuttle	8 00	
Cleaning privy	25 00	
114 double-faced matched partition, moulded cap & door in Masonic Hall	15 00	
		210 50

1869:

Weather-boarding battlement on front of block and carpenter-work on roof	12 80	
P'd Mainland, repairs on roof	51 00	
		63 80

1870:

Painting brick-work, east end	52 00	
Making cover to scuttle	8 00	
Repairing floor, Hubachek store	2 50	
Whitewashing building several times	35 00	
Painting east-end windows & doors	50 00	
Flooring laid in post-office, part twice	20 30	
		164 80

424 1871:

To building scaffold & taking down east gable and rebuilding with good walls	80 00	
Painting wood-work & brick same time	12 00	
Painting front windows & doors	35 00	
P'd Sweet, repairs on roof	12 00	
Sealing Bruce's store overhead	87 00	
Painting same	40 00	
Repairs Masonic Hall	20 60	
Taking out & replacing 46 white-ash steps in stair	36 80	
To cutting out and replacing 140 feet of matched flooring	8 40	
		331 80

1872:

Partition in back office, Yout's	11 00	
Building new chimney for engine	25 80	
Repairing floor in Bruce's store	3 00	
New sidewalk	62 50	
Paid Jones, repairs on roof	16 00	
		118 30

1873:

Repairs on Whitely & Yout's office, shelving & calsomining	28 00	
Burch & Bruce, glass-setting	6 10	
Repairs hoisting-rope	1 00	
Repairing cellar P. O.	180 20	
Repainting ceiling, Burch & Bruce	39 37	
P'd Jenks, putting in gutter	24 00	
To labor & material on 1,700 feet of flooring on old floor	85 00	
Jones, repairs on roof	120 00	
		483 64

1874:

Iron shutters for south windows.....	40 00	
Paid Ed. Stebbins, repairs on doors.....	6 00	
		46 00

425 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing deposition of Lucius S. Blake was taken before me pursuant to notice duly given and by consent of the counsel of the parties; that I was attended by the said counsel at the times & place as stated in the captions of said deposition & by the said witness, who was of sound mind and lawful age, & that said witness was by me first duly & publicly sworn to testify the truth, the whole truth, & nothing but the truth, and his deposition then by me reduced to writing in the presence of said witness & from his statements, and after carefully reading the same over to him, he subscribed the same in my presence; except that that part of said deposition taken on the ninth & tenth days of July, 1874, was reduced to writing by my clerk, M'r W. J. C. Forster, by consent of said counsel.

I further certify that the exhibit referred to in said deposition, & marked by me "Defendants' Exhibit No. 14," was produced before me and is hereto annexed. I have retained said deposition & exhibit in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either
426 of the parties in the said deposition and caption named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this eighth day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery U. S. Cir. C't, E. Dist. Wis.

427 *Deposition of Richmond W. Howland on part of def'ts.*

Circuit court of the United States for eastern district of Wisconsin.

In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Richmond W. Howland, on behalf of the defendants, in the above-entitled cause, taken, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

MONDAY, *June 1st*, 1874.

Present, D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

And said witness, having been previously sworn, deposes & says:

M'r Fish:

Q. When did you come to Racine first?

A. On the 1st day of October, 1849.

Q. What business did you go into?

A. I taught school the first fall & winter in the 5th-ward school in Racine.

Q. What business did you first go into?

A. I first engaged in the book & stationery business with Rev. A. C. Barry, in the spring of 1850.

Q. How long did that business continue?

A. About eight months. It might have been as late as June, of 1850, that we commenced.

Q. How was that business closed out?

428 A. The firm failed.

Q. What was the amount of their liabilities?

A. I could not give the amount at present.

Q. Was there a sale made by you and M'r Barry to one Knapp of your stock of goods?

(Objected to as incompetent & immaterial.)

A. There was.

Q. Knapp was a traveling man from New York, was he not?

(Same objection as before.)

A. He was traveling agent for A. S. Barnes & Co. at that time.

Q. Did he give his note for the stock of goods?

(Same objection as above.)

A. He did, except for the part which was due to A. S. Barnes & Co., who were large creditors.

Q. Was there attachments issued out of the circuit court for Racine Co., and the stock levied upon as the stock of you & Barry after the sale to Knapp, claiming the sale to be fraudulent, by Strong & Fuller as att'ys?

(Same objection as above.)

A. There were attachments, but never went to trial. They were settled by my uncle, M'r Hardy, in behalf of my father. He settled up with M'r Knapp, and also settled with Strong & Fuller & took all the property. It was sold on execution & bid in by him, what was not sold to outside parties.

Q. In settling with Strong & Fuller he paid them the am't of the debts for which they attached, did he not?

(Same objection as above.)

429 A. I think he paid them all their demands, whether attachments were made by them or not. I think he got considerable discount on some of the claims by paying cash. I think he also took an assignment of all the claims they had in suit.

Q. What became of the debts due to other creditors?

(Same objection as above.)

A. They were not paid. My impression is he paid M'r Knapp $1,500 rather than to have a lawsuit with him, as he claimed title to the purchase from Barry & Co. As I remember now, Strong & Fuller had A. S. Barnes & Co.'s claim, and Knapp was agent for Mark H. Newman & Co. at that time; and my uncle also paid them in full; and afterwards he, Knapp, was agent for A. S. Barnes & Co.

Q. Were the other creditors, except those mentioned, left without pay, and do their debts remain unsatisfied at the present time?

(Same objection as above.)

A. Those two firms were the two principal creditors of the house, and

the balance I think were not paid, except some few lots of commission goods.

Q. What proportion of the indebtedness remaining unpaid was put into judgment?

(Objection same as above.)

A. I could not tell.

Q. To the best of your opinion what was the amount of your indebtedness that remained unpaid?

(Objection same as above.)

430 A. My opinion would be, about one-third of the indebtedness; it might have reached one-half. I don't know how much it amounted to. I have never figured it up, or looked over the judgments.

Q. After Phineas Hardy made the settlement with Strong & Fuller of the claims upon which they had attached, how was the business carried on?

(Objection same as above.)

A. I worked for a while at $50 a month for Hardy until some time in the summer. The business was carried on by Phineas Hardy until he went home & settled with my father. I afterwards managed the business for my father.

Q. Whose name was the business carried on in at first?

(Objection same as above.)

A. In the name of Phineas Hardy until he settled with my father, then in the name of O. Howland, and then Howland & White, & then Howland & Adams. White's name was Otis L. White. O. Howland was my father, and he was the Howland in both the firms of Howland & White and Howland & Adams.

Q. Who had charge of the business at Racine in the interest of your father during the continuance of all these firms?

(Objection same as above.)

A. I managed the business on behalf of my father.

Q. How was the business closed out with White?

(Objection same as above.)

431 A. M'r Adams took his interest.

Q. Where was your father living all this time?

(Objection same as above.)

A. He resided in New York State, but lived a good deal of the time of the first year or two in Racine. He wasn't there so much the second year.

Q. Whose money was paid to Strong & Fuller on the transfer of that property?

(Objection same as above.)

A. It was M'r Hardy's individual draft on the Jefferson Co. Bank at Watertown, N. Y. I understand the money was my father's.

Q. Do you know how M'r Hardy was secured by your father for that money, or by anybody else?

(Objection same as above.)

A. I do not. It was a bargain between themselves.

Q. How long did the firm of Howland & Adams continue business?

(Objection same as above.)

A. About four years.

Q. How was that business closed?

(Objection same as above.)

A. It was closed by making an assignment in the winter of 1858.

Q. To whom was the assignment made?

(Obj'n as above.)

A. Benjamin F. Pierce.

Q. What was the amount of the liabilities of that firm?

(Objection same as above.)

A. I do not know the amount. The creditors were divided
432 into three classes. The 1st & 2nd were paid in full.

(M'r Fish is sole counsel present for defendants during the taking of the remainder of this deposition.)

Q. Who were included in the first class?

(Objected to.)

A. Borrowed money, and extended paper in the second class. In the third class were common bills of purchase that had not matured.

Q. Was Eugene Howland a creditor of the firm?

(Objection same as last.)

A. I don't know whether he was at that time or not. He was a creditor, and there were some notes & collaterals turned out to him as collateral before the assignment, but whether he was preferred or not I do not now know, and whether he was paid in full or not I do not recollect. I know that Howland & Adams used some of the money that belonged to Eugene Howland—were borrowers of him. He was not a preferred creditor.

Q. What amount of securities were turned out to Eugene Howland to secure him before the assignment?

A. From $500 to $1,000, as shown by the books of Howland & Adams at the time.

Q. What was the amount of the debts of Howland & Adams that remained unpaid?

A. I do not know. It was a very small sum in proportion to the whole of the liabilities.

Q. Do you know one William L. Needham?

A. Yes, sir.

433 Q. Did he bring a suit against you and Adams, charging you as being the real party in interest, & were you arrested in the same suit?

(Objection same as last.)

A. He commenced a suit in tort against me and my father's partner, M'r Adams, for rent for holding over, for the store-building occupied by that firm; I was arrested in that case, but the arrest was not sustained. I sued M'r Needham for false imprisonment, and recovered a judgment for $400.

Q. Was that judgment reversed by the supreme court?

(Objection same as to last.)

A. It was either reversed or sent back for a new trial.

Q. Did the supreme court hold in that case that you were properly arrested?

(Objection same as before.)

A. I don't recollect for what reason they sent it back.

Q. In the suit of Needham against yourself & Adams, did you not raise the issue that you were not the party in interest?

(Objection same as above.)

A. I think I did.

Q. Were you not sued as the party in interest?

(Objection same as above.)

A. I don't recollect as to that; I know I had no interest in it.

Q. Were you not sued as one of the real parties in interest in the case of Richard M. Wanzer & others against Richmond W. Howland, Alfred C. Barry, Oziah Howland, & Phineas Hardy?

(Objection same as above.)

434 That was a debt of A. C. Barry & Co., in which I was a partner, when I first commenced business.

Q. Do you know M'r B. Bagley, a lawyer at Watertown?

A. I am well acquainted with him.

Q. Where does he live?

A. At Watertown, New York.

Q. Did you receive a telegram from Eugene Howland about the 29th of April last?

A. No, sir.

Q. When did you receive a telegram from him last?

A. I don't recollect of ever receiving a telegram from him.

Q. Didn't you receive a telegram from him while M'r Blake & myself were at Watertown, N. Y., on or about the 29th of Ap'l, 1874?

A. No, sir.

Q. Did you receive any communication from Watertown at that time?

(Objected to same as above.)

A. I did.

Q. State who from?

(Objected to as before.)

A. I received a communication from my brother Jerome by a telegraphic despatch.

Q. What was it?

(Objected to as before.)

A. That M'r Blake was there & wished to take his deposition or his evidence.

Q. What else?

A. That is all to my recollection.

435 Q. Did you not receive a telegram at the time we were taking the complainant's deposition, purporting to be signed by him, which read in substance, "Blake & Fish are her', but I am mum"?

A. No, sir.

Q. Did you receive such telegram from either your father or brothers?

(Objected to same as before.)

A. No, sir.

Q. During the time that Howland & White & Phineas Hardy and Howland & Adams were in business, did you have charge of the interest of the Howlands in the business?

(Objection same as above.)

A. There was but one Howland engaged in that business, & I was agent for him, and acted for him.

Q. Are there not now, and were there not in 1858 and 1859, a large number of judgments against Richmond W. Howland, Oziah Howland, Eugene Howland, in the circuit court for Racine County?

(Objection same as above.)

A. All the old judgments against A. C. Barry & Co., are against myself & A. C. Barry. They were of long standing, but I do not know of any judgments against my father or brother Eugene at that time, except for liens on the Howland block against Eugene. I don't recollect of any judgments against my father in that court, but there may have been some.

Q. Did you know of a judgment against your father, Jan'y 4th, 1858, in favor of A. S. Barnes & others?

436 (Objected to same as before.)

A. There may have been; if there was it was a very small one.

Q. Do you know of the judgment of Albert G. Hartshorn against Oziah Howland, Jan'y 15th, 1858?

(Objection same as above.)

A. I don't recollect of it. There may have been.

Q. Do you recollect a judgment of Hiram Dayton against Oziah Howland & Moses Adams, Jan'y 18th, 1858?

(Same objection as above.)

A. There may have been; I don't recollect it, though.

Q. Do you recollect a judgment in favor of David Foote & others against Richmond W. Howland, Oziah Howland, Alfred C. Barry, & Phineas Hardy, April 19th, 1859, for $1,234.32?

(Objection same as above.)

A. I know that A. C. Barry & Co. owed David Foote & Co., but Oziah Howland & Phineas Hardy did not. If they ever got judgment against them it was by default. I don't recollect anything about the judgment.

Q. Did you appear in that case by Paine & Millett, your att'ys?

(Objection same as above.)

A. I do not recollect; Paine & Millet were our regular att'ys.

Q. Did you know of a judgment for deficiency on a foreclosure for $1,344.31 against Eugene Howland entered August 6th, 1861, in favor of Elias Manchester?

(Objection same as above.)

A. I know of Eugene Howland borrowing $1,000 of Elias Manches-
437 ter on lot 3, block 18, in the spring of 1857, I think it was, to put into the Howland block, and this was the foreclosure, I suppose in 1861, of that mortgage.

Q. How much did that property sell for?

(Same objection as above.)

A. I do not recollect now. The property, being a dwelling-house, was damaged very much by being in the rear of the Howland block, and there was a livery-stable built on the lot south of it.

Q. Do you know of that judgment for deficiency of $1,344.31?

(Objection same as above.)

A. I didn't know anything about it. It went by default. I knew there was a deficiency, but not the amount.

Q. You say in answer to a question that you didn't know of any judgments against your father in the Racine circuit court in 1858 & 1859; did you not know that there was large indebtedness against your father, growing out of your management of that book business?

(Same objection as above.)

A. I knew there were very small demands in Racine. There was not a large indebtedness against my father, for the amount of business that had been done.

Q. What do you call a large indebtedness for that business?

(Same objection as above.)

A. The firm was doing a business of $25,000 a year, and it never owed more than $10,000 at any one time, to my knowledge.

Q. What amount of indebtedness did your father owe, growing out of your management of that business, that has never been paid?

(Same objection as before.)

438 A. I don't think the balance on Howland & Adams' indebtedness would exceed $4,000. If it is more it is made up in costs & expenses.

Q. Do you know whether there have not been judgments obtained against your father in Jefferson Co., N. Y., growing out of that business, that have not been paid?

(Objection same as above.)

A. I do not know it of my own knowledge, but have been so informed.

Q. Does your father now live on the old farm that he lived on in 1857?

A. I do not know.

Q. Did he live on the old farm in June, 1873?

(Objection same as before.)

A. No, sir.

Q. How large a farm do you live on in Racine?

(Objection same as before.)

A. I don't live on a farm. I reside on $31\frac{70}{100}$ (thirty-one $\frac{70}{100}$) acres of land in Racine County, town of M't Pleasant.

Q. In whose name is the title to that land?

(Same objection as above.)

A. In the name of M'r's Howland.

Q. Have you a house & lot in the city of Racine in her name?

(Same objection as above.)

A. No, sir; my wife has one in her own name.

Q. What property did your wife have when you were married?

(Same objection as above.)

439 A. We didn't either of us have anything at that time. It was just after I had been unfortunate in business.

Q. How did M'r's Howland acquire the $31\frac{70}{100}$ acres of land and the house & lot in Racine?

(Objection same as above.)

A. The house & lot has considerably more than paid for itself in rents, it having always been rented out. There is about $300, may be $400, due yet on the house & lot, and $1,250 due on the farm. What payments have been made have been paid by our earnings, jointly. The 31 acres cost a little over $2,600. The cost of the house was $1,050.

Q. Did your wife acquire any separate estate from any source, except from your joint earnings since your marriage, as you have stated?

(Objection same as above.)

A. No, sir; we have earned all we have since 1867.

Q. At what time was the $3,000 borrowed from Phineas Hardy?

(Objection same as before.)

A. At the time my brother bought out the assignee of Howland & Adams in the spring or winter of 1858. M'r Hardy went his security, and this $3,000 mortgage was given to secure M'r Hardy for about that amount he advanced to my brother to take up the obligations he had become security for as endorser or joint maker of the notes.

Q. Did you do the business for Eugene Howland in that transaction with the assignee?

A. It was done with my approval.

Q. Who did the business?

(Same objection as before.)

440 A. We both did the business jointly, and it was approved by both of us at the time. My brother executed the papers and I approved of it.

Q. When were those notes paid to the assignee?

(Same objection as before.)

A. They were never paid to the assignee. He bought the stock for just the amount of the first and second class preferred creditors and executed notes for the amount due to each of the first & second class preferred creditors, and which were accepted by them in payment, knowing M'r Hardy was good.

Q. Give me the names of the preferred creditors in the two classes, as near as you are able.

(Same obj'n as above.)

A. The Racine Co. Bank, something over $3,000; J. T. Manchester, or Elias Manchester, I don't know which it was, about $600 or more, to the best of my recollection. I think there were some more first-class preferred, but can't recollect them. They were small in amount. The second-class creditors were extended paper, which was running to nearly all the parties we did business with. We obtained an extension on the papers in the panic in the fall of 1857, & this was that paper.

Q. Was the mortgage to M'r Hardy given for the full amount of the debts of the 1st and 2nd class?

(Same objection as before.)

A. No, sir; it was probably less than half. The assignee paid a great many, and I think my brother paid a part out of the avails of the stock, but the heft of the avails of the stock went into the building.

Q. Was your brother Eugene here at the time these notes were given to the assignee?

441 (Same objection as before.)

A. I think he was.

Q. Who paid Harvey his mortgage?

(Same obj'n as before.)

A. I do not know of my own knowledge that he ever had his pay, but understood & supposed that my father paid him; but don't know that he has been paid at all.

Q. You say that Phineas Hardy was a man of wealth?

(Same objection as before.)

A. He was reputed to be.

Q. Was he one of the creditors of Howland & Adams?

(Same objection as before.)

A. I cannot say as to that; I think not.

Q. Is that $3,000 mortgage the mortgage to Phineas Hardy about which you testified in your direct examination in this case?

(Same objection as before.)

A. It is.

Q. Have you been in attendance before the commissioner during all the time that testimony has been taken in this case?

(Same objection as before.)

A. I have, I think, been here all the time.

Q. Have you personally procured the attendance of all the witnesses and had the entire management of the case, except so far as your solicitors have managed it?

(Same objection as before.)

A. I have procured the attendance of most of the witnesses, and my brother's att'ys have had the management of the case.

442 Q. Has the complainant ever given the case any attention other than his conversation with you about which you testified on your direct examination on the part of the complainant?

(Same objection as before.)

A. He gave me full power to manage the case according to the best of my judgment, when I saw him in June, 1873.

(Ques. repeated.

Same obj'n as before.)

A. He has given it attention by writing to me, &c.

Q. Have you his letters to you?

(Same objection as before.)

A. I may have some at home; I have none here.

Q. Will you procure them?

A. I will, if I can find them.

Q. Has your brother, the complainant, personally furnished you with any funds to carry on this suit?

(Same objection as before.)

A. Yes, sir; I stated to him in a letter that the expenses had been about $200, and he sent me $200 last week; the 26th ult., I think, I rec'd it.

Q. Do you know that he lives on the farm the title to which is in his wife's name?

(Same obj'n as before.)

A. I do not know anything about it.

Q. Did he say to you, when you were there in June last, that he had nothing that could be touched by execution, and that if you could hire money to carry on the suit in his name, you might do it, or words to that effect?

(Same objection as before.)

A. I do not recollect any such conversation.

Q. Have you ever taken the trouble to look up the amount of
443 judgments against yourself, your brothers Eugene and Jeptha, and your father, Oziah Howland?

(Same objection as before.)

A. I have never looked them up for the purpose of seeing how much they amounted to.

Q. How much money did you receive from Eugene Howland, after he determined to build the Howland block?

(Same objection as before.)

A. I received from him from California $1,755.00. When he came here in the winter of 1857 & 1858 he brought with him about $600. $6,500 from Phineas Hardy & Oziah Howland. I also received $4,000 from the assignee of Howland & Adams. I received $1,000 by mortgaging lot 3, block 18, in city of Racine, belonging to my brother. I received for 50 feet of lot 4, block 18, in 1st ward in Racine, belonging to my brother, $700. I received for 3 teams, 3 wagons, 3 harnesses, & about 500,000 brick, which my brother made in the season of 1859, as near as it can be approximated, $3,300.60, and $7,000 from Isaac Taylor, making the whole amount $24,855.00.

Q. How much money did you receive from Eugene Howland, personally, after he determined to build the Howland block?

(Same objection as before.)

A. He sent me personally $1,755 from California, $600 that he brought with him in the winter of 1857 & 1858; $4,000 out of the Howland & Adams stock, part in money & part in trade. I also rec'd $1,000
444 from the mortgaging lot 3; I also rec'd $700 for fifty feet of lot 4, to apply on a cash debt of Eugene Howland's; also $3,300 from the proceeds of the 3 teams, 3 wagons, 3 harnesses, and 500,000 brick, to apply on his cash debts incurred on this building.

(Def'ts' counsel moves to strike out all the above answer except the first item.)

Question repeated.

(Same objection as before.)

A. He sent to me from California $1,755.00, and brought with him when he came, in winter of 1857 & 1858, $600.

Q. What time was the first money sent from California?

(Same objection as before.)

A. At various times. The first was sent perhaps a year before the building was commenced, and after he had determined to build.

Q. How did he get the $6,500 from Phineas Hardy and your father, and at what time?

A. He got the first $1,000 of my father in the way of a draft from him.

Q. What was done with the money?

(Same obj'n as before.)

A. I deposited it in the Racine Co. Bank in the name of my brother, and checked it out at different times. I kept his accounts separate from all other accounts.

Q. When did you receive the next money of the $6,500 from Phineas Hardy?

(Same objection as before.)

A. In the spring of 1858, by M'r Hardy's paying his joint obligation with my brother, given for part purchase-money of the Howland
445 & Adams stock, and my brother using that portion of the avails of the stock in the erection of the Howland block.

Q. Did he ever receive any other money from Hardy, except that which Hardy paid on the obligations given the assignee for the Howland & Adams stock?

(Same objection as before.)

A. Not that I recollect of now.

Q. Then he never rec'd any part of the $6,500 from Hardy, except what Hardy paid to other persons on account of the stock of goods?

(Same obj'n as before.)

A. He rec'd no money from Hardy directly, but he rec'd the avails of the goods that Hardy's money paid for, to the amount of $3,000.

Q. Are those the same goods that you mentioned in the item of $4,000 in your answer to the first question I put to you relative to how much money you rec'd from your brother?

(Same objection as before.)

A. No, sir; that is the amount he rec'd over and above what he paid for the goods.

Q. How much was that he rec'd for the goods, over and above what he paid for them?

(Same obj'n as before.)

A. About $4,000.00. In other words he made about $4,000 out of the transaction.

Q. When did Eugene Howland get the next money from the $6,500 which you say was furnished by your father & Phineas Hardy?

(Same objection as before.)

A. It was obtained at different times from the firm of Howland & Adams, and charged to my father on his private account.

446 Q. How much was that account that was transferred to the a/c of Eugene Howland?

(Same obj'n as before.)

A. The ledger has been destroyed, but the amount, I think, was about $2,500.00 charged to my father's individual account at various times,

which was drawn out for the benefit of my brother Eugene in erecting the Howland block.

Q. Was all that was charged to your father's account, on the books of Howland & Adams, put into that block of buildings?

(Same obj'n as before.)

A. No, sir; nearly all was.

Q. Was Howland & Adams at that time in failing circumstances?

(Same obj'n as before.)

A. Not until after the panic of 1857, when they lost about $7,000.00 in bad debts. They had two teams travelling in the country selling goods at wholesale, by which they lost heavily.

Q. At what time did you commence to build the Howland block?

(Same obj'n as before.)

A. In the spring of 1857.

Q. How did your brother get the horses about which you have spoken; that is, the 3 teams, 3 wagons, and 3 harness?

(Same obj'n as before.)

A. They were bought for his business in the brick-yard in 1858 & 1859—two of them were; one of the teams I purchased for him from Howland & Adams in the summer or fall of 1857, when they concluded to take their teams off the road.

Q. How were these teams paid for?

(Same obj'n as before.)

A. The team he had from Howland & Adams was paid for in
447 money. It was paid for out of his money that he had loaned Howland & Adams. My brother bought the other two teams in the spring of 1858, I think it was, and paid for them part in money and part in trade out of the store.

Q. To whom did you sell the 500,000 brick you have spoken of?

(Same objection as before.)

A. The brick that were manufactured in the summer of 1858—the majority of them were put in the building to finish it. Those of 1859 were turned out to his different creditors on the building. He had a meeting of the creditors and agreed to turn them out all the property he had, and did so.

Q. Name those creditors.

A. Wratten & Brenham were the heaviest creditors on mechanical labor—carpenter and joiner work. He turned out to them, my impression is, about 150,000 brick. And to Louis & W'm Peil he turned out very near 200,000 brick, I think. There were four or five other parties, creditors, to whom he turned out from 40,000 to 75,000 brick, each.

Q. What was obtained for the horses?

(Same obj'n as before.)

A. The team that Wratten & Brenham took, was $300. I think the three teams of wagons, horses, & harnesses, averaged $300 each, making a total of $900.

Q. Where were the bricks sold?

(Same obj'n as before.)

A. They were delivered on the yard.

Q. What was the price of brick per thousand on the yard at that time?

(Same obj'n as before.)

A. From $4.00 to $4.50—perhaps that is too high; from $3.50 to $4.50.

448 Q. Were all of the bricks that were contracted to be delivered, actually delivered?

(Same obj'n as before.)

A. They were delivered on the yard—counted off by arches—each party knowing his own bricks.

Q. How was the fact as to the brick sold to Falvey?

(Same objection as before.)

A. I had a settlement with M'r Falvey in the September previous to this; and of his account against my brother of about $1,000, there was a balance of about $240; I gave him a due bill payable in bricks, payable one day after date, my recollection is. M'r Falvey said he had no particular use for the brick then, and it run over until the next year. The bricks never have been delivered.

Q. Was the account ever paid?

(Same obj'n as before.)

A. Not to my knowledge.

R. W. HOWLAND.

449 UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States, for the eastern district of Wisconsin, do hereby certify that the foregoing deposition of Richmond W. Howland was taken before me, pursuant to notice duly given and by consent of the counsel of the parties; that I was attended by the said counsel at the time & place as stated in the caption of said deposition, and by the said witness, who was of sound mind & lawful age, and that said witness was by me first duly & publicly sworn to testify the truth, the whole truth, & nothing but the truth, and his deposition by me reduced to writing in the presence of said witness, & from his statement; and, after carefully reading the same over to said witness, he subscribed the same in my presence. I have retained said deposition in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

I further certify that I am not of counsel or solicitor for either of the parties in the said deposition and caption named, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand, this eighth day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery, U. S. Cir. C't E. Dist. Wis.

450 *Deposition of Geo. W. Slawson.*

Circuit court of the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of George W. Slawsen and of F. W. Bruce, recalled, in the above-entitled cause on the part of the defendants, taken pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office, in Milwaukee, Wis.

FRIDAY, *July 3rd*, 1874.

Present, D. G. Hooker, counsel for complainants.
" C. E. Dyer, " " defendants.

And the said GEORGE W. SLAWSEN, being duly sworn, deposes & says:

I am 36 years of age. I reside in Racine, and am in the lumber business. I am a member of the firm of Murray, Slawsen & Co., of Racine. Their office is situated on Second st., between Chatham st. and the lake, on both sides of the street. Our present building has been occupied about seventeen years as a lumber office; am not positive whether it was occupied in 1862 by Taylor, Murray & Co. or Kelley & Murray, but think it was Taylor, Murray & Co. There were three changes of the firm between 1857 & 1864. First, the members of the firm were
451 Isaac Taylor, George Murray & M'r Baker—don't recollect his first name—and the firm-name was Taylor, Murray & Co. In either 1859 or 1860 James H. Kelly became a member of the firm in place of M'r Baker, but the firm-name remained the same until the spring of 1862 or 1863; the firm was again changed, M'r Taylor retiring, and the firm name became Kelly & Murray, & remained so until the spring of 1864, when the grounds and office were rented by D. Slawson & Co., who took possession in April, 1864. There were four partners in that firm, but only two appeared on the bill-heads and signs. The four were Daniel Slawson, J. R. Slawsen, George Murray, & myself. They occupied the same office-building now occupied by Murray, Slawsen & Co., until the spring of 1866. There are two rooms in that office-building; one a front room and the other in the rear. It has been so divided ever since it was built. In 1862 there was no open space in the partition, except the door. There is now an aperture through that partition, aside from the door. I can't tell exactly the date that aperture was made, but it was not before D. Slawsen & Co. took possession of the office. It was put there some time in 1866. It was not there when we took possession of the office in April, 1864. The office faces the north, on the south side of the street. The chimney is in about the centre of the partition; the partition is not in the centre of the office, being nearer the back
452 end, and the door is on the right-hand side of the chimney as you enter the office, and the window, or aperture in the partition, is on the left of the chimney. Previous to the opening of that aperture, the rear room was used for storing the surplus stuff of the office and for storing boxes of papers & books, accumulated in the business of the firm. There was generally a chair or two in there, and if we wanted to speak to a man privately, would take him in there, in preference to going out of doors. Since 1866 it has been kept as a kind of private office, with a desk in it, and the clerk has worked in there since then. The members of the firm have private desks in the front office.

GEO. W. SLAWSON.

Deposition of Frederick W. Bruce, recalled.

FREDERICK W. BRUCE, being recalled on the part of the defendants, deposes and says:

Q. Did you, in 1864 or 1865, have a conversation with James T. Elliott, one of the defendants herein, at the store of Burch & Bruce, in Racine, in the presence of Silas F. Lefler, about the leaking of the roof of the Howland block, or about the price of the rent of your store, or in which you asked Elliott what was his price for the building, or what it

was worth, and in which he said it was not theirs to sell. but supposed it was worth thirty thousand dollars, or it may be $35,000, and in
453 which he said or carried the idea that all they wanted out of it was the money they had in it, and stated the amount to be $9,600 or $10,000?

A. I don't remember any such conversation. I don't think that such a conversation was ever had between myself and M'r Elliott in the presence ot M'r Lefler or any other person.

Q. Did you, at or about the time or times mentioned, have a conversation with M'r Elliott, in the presence of M'r Lefler, when he (Elliott) had an account-book in his hand, and said or carried the idea that he had to keep a separate account of his receipts and expenditures on that building, and in which M'r Lefler asked him why that was, and he answered that it was because of an agreement between the parties?

A. I have no recollection of any such conversation.

Q. Did you ever, at any time, in the presence of M'r Lefler, have any such conversation or conversations with M'r Elliott?

A. I don't remember of ever having a conversation with M'r Elliott in presence of M'r Lefler, either in regard to the building or the rent.

Q. If you had ever had any such conversation with M'r Elliott as is above stated, would you be likely now to remember it?

A. I think I should.

Q. Do you know Silas F. Lefler?

A. I do.

454 Q. Did you have a conversation with M'r Elliott in 1865 about the property and M'r Howland's connection with it?

A. I did.

Q. When and where?

A. On the 24th or 25th of June, 1865, in our store.

Q. State the circumstances and what was said.

(Objected as incompetent and immaterial.)

A. M'r Howland at that time was trading with us in the store, and had been for some time prior to that. He paid his account by orders from Blake & Elliott. It was about the time our rent was due, and M'r Howland brought us an order from Blake & Elliott for $50. There was still a balance due on his account, over and above the $50.00, of $60.37, and I wanted M'r Elliott to give an order, or allow it all to be charged up to Blake & Elliott. He objected, saying they had overpaid him, and I said I supposed they would pay any account that M'r Howland might have and be safe, on account of the interest which M'r Howland had in the building. After talking some time, he permitted it to be charged up, but told me it was the last they should be responsible for, and that M'r Howland had no interest whatever in the building.

Cross-ex'n:

Q. Wasn't it Richmond W. Howland that had been trading with you, and against whom you had this account?

A. It was.

455 Q. Hadn't you understood from some source, prior to the time of this conversation you have mentioned about R. W. Howland's account, that Blake & Elliott were holding the Howland block for the benefit of Howland?

(Objected to as immaterial.)

A. I had such an impression. I can't tell what gave me the impression. I supposed that Howland had some interest in the building.

Q. May you not have got that impression from some conversation with Elliott or some statement of his?

A. I might, possibly, but don't think I did. I think the first time I heard Elliott speak about it was when he told me Howland had no interest in it.

Q. In what manner were these accounts of R. W. Howland paid by Blake & Elliott; were they deducted from the rents?

A. They were settled by Blake & Elliott when we paid our rents. Howland's account was added to the a/c of Blake & Elliott, and the rent then deducted, if our account was the largest. If the rent was the largest, we paid the balance.

Q. How long had this arrangement continued prior to this conversation with Elliott you have mentioned?

A. I think nearly a year; maybe over a year.

Q. Didn't Lefler trade at your store?

A. He traded some with us.

Redirect ex'n:

456 Q. At the time of this arrangement for the payment of Howland's accounts, did Blake & Elliott trade at your store?

A. Yes, sir; they did.

Q. During the existence of this arrangement was M'r Howland in any manner connected in business with Blake & Elliott or in their employ?

A. I think during the greater part of the time he was making brick, as I was informed, for them. I don't know whether he was selling fanning mills for them any part of the time or not.

F. W. BRUCE.

457 *Deposition of L. S. Blake on rebuttal.*

Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Lucius S. Blake in the above-entitled cause (by way of rebuttal) in behalf of the defendants, taken, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.:

MONDAY, *July 6th*, 1874.

Present, D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

And the said LUCIUS S. BLAKE, having been previously sworn, deposes and says:

M'r Dyer:

Q. In what business was Richmond W. Howland engaged in the spring of and during the year 1863?

(Objected to as incompetent & immaterial.)

A. During the summer season and until about the 1st of October or November he was working for Blake & Elliott, selling fanning mills about the country & collecting.

Q. What time in that year did he commence working for your firm?

A. I think in the last of March or first of April.

458 Q. Do you remember what M'r Howland was doing the year before, that is, in 1862?

(Same objection.)

A. My impression is he was at work for us.

Q. Did you in May, 1863, or at any time during that year, have a conversation with A. P. Dickey, in which he said, "I understand you have been helping M'r Howland to pay for the building, and have taken M'r Taylor's interest in it," and in which you said that M'r Howland's wife had been dinging or teasing you to advance money to M'r Taylor, to take it in the name of Blake & Elliott, and to become responsible to pay M'r Taylor what was going to him; and in which you further said you had done it, and at the expiration of ten years, if the rents paid the taxes and the interest and principal of the money, then it was to be deeded back to the Howlands?

A. I had no such conversation with him.

Q. Did you in May, or at any time in 1863, have a conversation with M'r Dickey, in which you said to him that on account of R. W. Howland's wife you wished to help him save the property or something in it?

A. I did not, sir.

Q. Did you ever at any time have any such conversation or conversations with A. P. Dickey as are above mentioned?

A. I did not.

Q. Do you remember the construction of Osborne & Osgood's brick block in Racine?

A. I think I do.

Q. State when that building was completed.

A. In 1862, I think.

459 Q. Did you furnish any of the brick for that building?

A. I think I did.

Q. Where were the brick made?

A. At what we called the Howland yard. It was my land at that time.

Q. Were you then interested in the brick-yard, and, if so, who was operating it for you?

A. I was, and it was operated, I think, by the Harding boys, but Howland may have had an interest in it.

Q. Is that the brick-yard referred to by yourself & Howland in your former testimony, and concerning which there was an agreement between yourself and Howland, by which M'r Howland was to have the property when it was paid for?

A. It is the same yard.

Q. Did you have a conversation with A. P. Dickey concerning the brick-yard & R. W. Howland's connection with it?

A. I think likely I did.

Q. Do you know A. R. Burdick, of Racine?

A. I do.

Q. Did you, shortly after the transfer of the Howland block to yourself and M'r Elliott, have a conversation with M'r Burdick, in which he said to you, "I understand you have bought the Howland block," and in which you said, I have or have not; I have the papers for it, and Howland has the right to redeem it, or the chance, or something to that effect, and in which you said, "he probably never will do it"?

460 A. I don't think I ever had any conversation with him in relation to the Howland block. He is a man I very seldom speak to—have not for years.

Q. Do you know A. P. Dutton, who has been a witness in this case?
A. I do.
Q. Did you have a conversation with him shortly after your purchase of this property, in which you said to him that M'r Howland was to have the benefit of the property the same as if M'r Taylor had held it, and in which you spoke of your friendly feelings towards Howland, and said that you were as safe a man to hold it as Isaac Taylor was?
A. I did not. I have not had as much talk as that with him in ten years.
Q. Did you, soon after the purchase of the Howland property, have a conversation with M'r Dutton, in which you said to him that you had paid M'r Taylor's claim all up, or had assumed it, or something to that effect, and that when you got the money from the rents of the property, or otherwise, you would give it up to Howland, and that you did it to help Howland?
A. No, sir, I had no such conversation with him.
Q. Did you ever, at any time, have any such conversation or conversations with M'r Dutton?
A. I did not. I had no conversation with him in relation to it.
461 Q. Have you and M'r Dutton been upon speaking terms during the past twelve years?
A. He is man I seldom speak to.
Q. Do you know Ellen M. Howland, wife of Richmond W. Howland?
A. I do.
Q. Did you have any conversation with M'r's Howland concerning the Howland block just before the transfer of the property to yourself and M'r Elliott?
A. I think I did.
Q. Did you say to her in that or any other conversation which you had with her on the subject, that you had arranged the purchase with Isaac Taylor; that you took the property just for the amount of the mortgage, and was holding it until paid for by the rents, and in which you wanted her to promise she would say nothing about the property to annoy you until paid for, and in which she said she would not annoy you about it?
A. No, sir; there was no such conversation or arrangement.
Q. Did you say to her that if you could make such an arrangement you would take the property from M'r Taylor upon those terms?
A. I did not.
Q. Do you know Silas F. Lefler?
A. I do.
Q. Was he ever in the employ of Blake & Elliott; and, if so, where?
462 A. He was, but I can't state now at what time he left our employ. He has not worked for us for 6 or 7 years.
Q. After your purchase of the Howland block, did you have a conversation with M'r Lefler at your office in Racine, in which you told him that Blake & Elliott were carrying the Howland-block property, and signified that it would pay for itself if the rents kept up, so that Howland or the Howlands would get it back in ten years or so?
A. No, sir; I had no such conversation with him.
Q. Did you ever have such a conversation with him?
A. I did not.
Q. What have been the relations between yourself and M'r Leflre since he left your employ?
A. Well, I have had nothing to do with him since that time.

Q. Was he dismissed from your employ?

A. He was, and still owes us to-day, and we cannot collect from him, for money he collected for us in the country and which he refuses to pay over.

Q. Since his dismissal from your employ have your relations with him been social or friendly?

A. They have not.

Q. Do you know John W. English?

A. I do.

Q. Did you hear his testimony given in this cause, in which he detailed a conversation which he testified he had with you in regard to the Howland block in the early part of December, 1862?

463 A. I did hear it.

Q. Did you have any such conversation with M'r English concerning the Howland block as is detailed by him in his testimony?

A. I did not.

Q. State whether you ever talked with M'r English about the Howland property after M'r English moved away from Racine or at any other time?

A. I think I talked with him on the subject.

Q. Did anything ever transpire between you and M'r English concerning the Howland property?

A. No, sir. I think we never had any business together with the Howland block, and never had any talk with him about it, to my recollection. He was not a man I would associate with in business of ten thousand dollars.

L. S. BLAKE.

464 *Deposition of Lewis C. Osborn.*

Circuit court of the United States for the eastern district of Wisconsin,
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Lewis C. Osborn and James T. Elliott (recalled) in the above-entitled cause, taken on behalf of the defendant, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

TUESDAY, *July 7th*, 1874.

Present, D. G. Hooker, counsel for complainant; Cha's E. Dyer, counsel for defendants.

And the said LEWIS C. OSBORN, being duly sworn, deposes and says:

I am 45 years of age. I reside in Racine. have no particular occupation. I deal some in lumber. I am one of the firm of Osborn & Osgood, at Racine. That firm erected a brick building on Sixth st., fronting Market Square, in Racine, in the spring & summer of 1862.

Q. When was the brick-work on that block fully completed?

A. In October, 1862; completed and settled up.

465 Q. Does the firm of Osborn & Osgood own any other brick block on 6th st., fronting Market Square, in Racine, than that above mentioned?

A. We do not nor have not built any other, either previous or since, on that street.

LEWIS C. OSBORN.

Deposition of James T. Elliott, recalled.

JAMES T. ELLIOTT, being recalled on behalf of the defendants, deposes & says, being previously sworn:

Q. Do you know Albert P. Dickey, who has testified as a witness in this cause?

A. Yes, sir.

Q. So'n after the transfer of the Howland-block property to M'r Blake & yourself, did you say to M'r Dickey, in front of the Howland block, at Racine, that you, or Blake & Elliott, had paid M'r Taylor his claim on the building, and proposed to help Howland try to redeem it.

A. No, sir.

Q. Did you ever, at any time or place, have any such conversation with M'r Dickey?

A. No, sir.

Q. Do you know Silas F. Lefler?

A. Yes, sir.

Q. Was he ever in the employ of Blake & Elliott; if so, how long since?

466 A. He was in our employ. Don't think he has worked for us within six years.

Q. Did you ever have a conversation with Frederick W. Bruce, at the store of Burch & Bruce, in Racine, in the presence of M'r Lefler, about the leaking of the roof of the Howland block, or about the price of the rent, in which M'r Bruce asked you what was your price for the building, or what it was worth, and in which you said it was not yours or Blake & Elliott's to sell, but supposed it was worth $30,000 or $35,000, and in which you carried the idea that all you or Blake & Elliott wanted out of it was the money they had in it, and stated that to be $9,600 or $10,000?

A. No, sir.

Q. Did you have a conversation with M'r Bruce in the presence of M'r Lefler, when you had a little account-book in your hand, and carried the idea that you had to keep a separate account of your receipts and expenditures on that building, and in which M'r Lefler asked you why that was, and you answered that it was because of an agreement between the parties?

A. No, sir.

Q. Did you ever have such conversation or conversations as are above recited with M'r Bruce alone or in the presence of M'r Lefler?

A. No, sir.

Q. What was the cause of M'r Lefler ceasing his employment under Blake & Elliott?

467 A. We did not want him any longer. We could not rely on him. He was not truthful or reliable.

Q. What have since been the relations between M'r Lefler and Blake and Elliott?

A. They have not been friendly.

JAMES T. ELLIOTT.

468 *Deposition of Tho's H. Davis.*

Circuit court of the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Depositions of Thomas H. Davis & W'm S. Buffham and George Q. Erskine (recalled), in the above-entitled cause, taken on behalf of the defendants, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis., pursuant to notice given.

THURSDAY, *July 9th*, 1874.

Present, D. G. Hooker, counsel for complainants; J. T. Fish & C. E. Dyer, counsel for defendants.

And the said THOMAS H. DAVIS, having been previously sworn, deposes & says:

Q. Are you the person who has once been examined in this cause as a witness for the complainant?

A. I am.

Q. Have you made an estimate of the cost of certain repairs upon the Howland block at Racine?

A. I have.

Q. When was your estimate made?

A. On yesterday.

Q. In what manner did you make the estimate?

469 A. Where it was practicable I measured the depth and took the amount of material.

Q. Is the paper now shown you the estimate which you made?

A. It is; it was prepared by me.

Q. Would it cost the sums named in that paper to make the repairs therein mentioned?

A. I think it would.

Q. Did you have personal knowledge of the making of these particular repairs?

A. Not any.

Q. Who pointed out to you the places in the building where the repairs mentioned in your estimate were said to have been made?

A. M'r Blake.

Q. What general knowledge have you of repairs having been made upon that building since Blake & Elliott have had control of it?

A. I know that they have repaired the floors, stairs, roof, partitions, and sidewalk, and the battlements on the gables. That is all I think of.

Q. What, in your judgment, would be the cost of those repairs from year to year during the past ten years, and such other repairs as have been necessary to keep up the building?

(Objected to as incompetent.)

A. I couldn't state.

Q. With reference to what time in making repairs did you make your estimate of their cost?

470 A. I did not make the estimate with reference to any particular time. He pointed out the repairs to me and I estimated what they would cost now.

Q. Would there be any material difference in the cost of these repairs if made at the time of your estimate, and if made at any time during the past eight or nine years, particularly in 1865, 1866, and 1867?

A. There would be.

Q. What would the difference be?

A. Maybe 15 or 20 per cent. lower now than then.

(Defendants' counsel offers the said estimate of cost of repairs made by the witness and signed by him in evidence, and same is marked "Def'ts' Exhibit 13.")

Cross-ex'n:

Q. Does this estimate or statement which you have made in the several items fully represent the character and amount of the materials furnished and the work done so that another person could make an estimate from it as intelligently as you could at the time you made the estimate, or did you base your estimate in part on statements or representations made by Blake or any one else?

A. It don't state the material, but any carpenter would know what kind to use for similar work. I know that some of these repairs were done. I know that the roof was repaired, the floors repaired, the stairs repaired, the sidewalk rebuilt once, and I think I could be positive
471 as to one of the partitions; as to the balance of the repairs, M'r Blake pointed out a part, and some I could see myself where repairs had been made since the building was constructed.

Q. When was the sidewalk relaid, at the time you refer to as knowing of the fact?

A. I couldn't tell the year and couldn't tell whether it was the last time it was done or not.

Q. What means have you of knowing what the character of the materials was which were used in relaying it at the other two times?

A. I hav'n't any.

Q. Where are the eight sets of inside blinds mentioned in the last item of the estimate?

A. On the second floor. I understood them to be in A. O. Stafford's office, Ira C. Paine's office, and Whitely's office. They are fourfold blinds.

Q. Where is the 1,700 feet of flooring mentioned in the estimate?

A. In the old council-room and in Sandford's office.

Q. Won't you point out the item in the estimate which refers to repairs on the roof?

A. The first two on the second page.

T. H. DAVIS.

Deposition of W'm S. Buffham.

And the said WILLIAM S. BUFFHAM, being duly sworn, deposes and says:

472 I am 44 years of age; I reside in Racine; am a dealer in paints and oils at present; have been a practical painter for the last thirty years. I know the Howland block in Racine. I have made an estimate of the cost of certain repairs said to have been made on that building.

Q. State what repairs you have estimated the cost of and the estimate you have made.

A. The statement I hold in my hand is an estimate I made of the

cost of painting the whole outside of the block; that is, all the wood-work on the front and rear and part of the brick wall in the rear. It appears, as M'r Blake tells me, that they have painted the building two coats, including the brick wall once, which I have estimated at $158.00. They have also painted all the outside work, except the brick wall, with two coats of paint once, which I estimate at $106.00. They have also put one coat of paint on the entire store fronts, which I estimate at $32.65.

Q. Was that a fair valuation of the materials and work for the amount of labor specified in the estimate?

A. It is.

Q. Is that estimate made of any particular date?

A. Yes, sir.

Q. State the day.

A. The first two items are made on the prices current about from 1867 to 1870, and the last item on the price of last year, when the work was done.

473 Q. In your estimate did you include anything for painting on the sides of the building?

A. No, sir.

Cross-ex'n:

Q. When did you make this estimate?

A. Yesterday.

Q. And all you know of the fact whether the work was done was from what M'r Blake told you?

A. No, sir; I know of the fact that the store fronts were painted one coat last year. I also know that the building has been painted outside twice since it has been in the possession of Blake & Elliott—at least the front of it, but whether it had two coats at those times I could not be positive. I know that the brick-work must have had two coats at some time.

Q. What do you embrace in the painting of the front of the building?

A. The cornice, windows, window-casings, caps, sills, and entire store front.

WILLIAM S. BUFFHAM.

Deposition of G. Q. Erskine, recalled.

George Q. Erskine, being recalled by def'ts, deposes and says:

Q. You have been sworn in this case before?

A. I have.

Q. Do you know the complainant, Eugene Howland?

A. I do.

474 Q. Did you see him frequently before he left Racine for California, in or about the years 1859 or 1860?

A. I saw him frequently about the time before he left Racine, but don't know whether he went directly to California or not.

Q. Did you hear him say anything in reference to his property in Racine?

(Objected to as incompetent and immaterial.)

A. I did.

Q. What did he say about it?

(Same obj'n.)

A. He said he regarded his property as lost; that he had sent from California at different times to Richmond money, and Richmond had

used it in the building somewhere, and that he regarded it as all lost, or in substance to this effect, and that he had got to start in life again. I won't undertake to say that is what he said verbatim, but he frequently talked to me in that way, and I recollect his stating that he had worked very hard in California a number of years—I think it was five—and his property was gone and he had to start anew. I have heard him talk a good deal on that subject, but think that is about the substance of it.

Q. Have you seen Howland since he left here?

A. No, sir.

Q. During these conversations that you had with him, did he state about his indebtedness?

(Same objection as before.)

A. He did.

475 Q. State what he said about it.

(Same obj'n.)

A. He said he was in debt and he had no means of paying his debts, and he didn't know what to do. I recollect of his saying he thought he should go to California and try to get a start again.

GEORGE Q. ERSKINE.

476 *Deposition of A. C. Sandford.*

Circuit court of the United States for the eastern district of Wisconsin

In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Adam C. Sandford in the above-entitled cause, taken on behalf of the defendants, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

FRIDAY, *July 10th*, 1874.

Present, D. G. Hooker, counsel for complainant; Cha's E. Dyer & J' T. Fish, counsel for defendants.

And the said ADAM C. SANDFORD, being duly sworn on behalf of defendants, deposes and says:

I am 50 years of age; occupation, printer; reside in Racine. I occupy rooms in the Howland block building for the purpose of publishing the Advocate, and job-printing and book-binding. I have been there since the fall of 1858. I was the first tenant in the building. My tenantcy has continued ever since, to the present time.

Q. What rooms do you occupy in the building?

A. I no' occupy the entire third story of the block; it includes
477 the room formerly occupied by the city for council-room and city officers.

Q. When did your possession of that room begin?

A. Last September.

Q. What repairs and changes have been made by Blake and Elliott in third story of the building since they have had control of it?

A. The placing the timbers and supports in the place of the brick wall, between number 141 and 143, in the third story, about 60 or 70 feet of support; there was a heavy timber overhead that the masonic

floor rests on with the square timbers extending to brick wall on the floor of the third story. They braced that at a subsequent period with braces from the posts up to the timber overhead, and further braces from the upper braces running to the floor. The braces or truss-work extends the whole distance from front to rear, about 90 feet. There were iron plates put on the outside of the wall, and iron rods running through the wall were secured to the timbers on the inside about three feet from the wall. They put iron shutters on two windows on the north side of the building, in the old council chamber, and iron shutters on the south side of the building, next Sanglois and Sons. They rebuilt and cut out and enlarged the chimney in the wall, between 139 and 141, from the second floor to the top of the chimney. They repaired and painted the wood-work of the windows in the third story, inside
478 and outside, twice. Last summer they laid a new floor in my office, and in the old council-chamber room. They did a good many little jobs of repairing, such as putting a new lock on one of the doors and rehanging three of the doors. The stairways, from the third story down to the second, were either repaired by recovering or new steps entirely. They put on a new roof over the old one—a composition roof. The old roof was in such condition that I gave them notice that if they did not fix it I should leave the building. I could not occupy it; the northeast storms would drive the water in upon the east wall, and would run down on the inside, and in the winter the snow-storms would block up the north gutter, and then, when it rained, the water would raise so that it came above the felting and run down between the felting and the whole length of the north wall. These repairs were all made by Blake & Elliott. There have been frequent patches of new plastering in my printing-office, and mending the flooring where it wore through.

Q. Have any other repairs, outside of your rooms, been made on the building by Blake & Elliott? If so, state them.

A. I don't know about the repairs below, but when they fixed the roof they cemented the defective places in the wall, from the roof, I should think, 20 feet down, and then painted over that. The necessity for that was by the water getting into the brick and their crumb-
479 ling so much; that was in the east wall. The outside wood-work, on the front side of the building, was all painted by Blake & Elliott. The steps on the stairs, from the second story down to the street, were of pine; they were all taken out and all replaced with hard-wood steps. The side-walks have been rebuilt as much as three times by Blake & Elliott, I should think. There is a hoisting-machine standing in the back of my department, extending down to Bruce & Birch's; there has been some little repair done to it in my room, and new ropes put to it in place of the old ones that were worn out, over 50 of hoisting-rope, and 100 feet for the bull-wheel; that has been done twice, I should think.

Cross-examination:

Q. Have you any recollection of the time of the several repairs mentioned by you were made?

A. The rebuilding the chimney was done in the fall of 1871. The first work of putting in the supports, in place of brick wall, was done in 1863. I think it was in 1863. Then the braces that have been put in have been done at several times; the first braces were put in about 1865 or 1866. The plates and iron rods were put in about 1868 or 1869.

Q. Who took out the brick wall where these supports were put?

A. I took it out at my own expense and labor.

Q. How many windows in the Advocate office that have inside blinds?

480 A. There are only two.

Q. When were those blinds put in?

A. They must have been put in when M'r Howland had the building; they were put in at our own expense.

Q. Do you recollect at about what time the sidewalk in front of the building was relaid?

A. No, I do not. It must have been very soon after they came in possession.

Q. Do you recollect about what time the sidewalk was relaid the second time?

A. No, I do not.

Q. Do you recollect about what time it was relaid the third time?

A. It must have been about three or four years ago it was laid the last time.

Q. Assuming that it was relaid the first time by them in 1865, may you not be mistaken in thinking or supposing that it has been relaid three times?

A. Well, I can't state certainly that it was laid three times.

Q. Do you recollect whether or not the whole east end of the building was ever painted by Blake & Elliott?

A. Yes, I know that it was.

Q. About when was that?

A. Well, they fussed about on that east end so many times that I can't tell the date; they tried a good many ways to stop the water from coming in before they succeeded. I do not mean to say that the
481 whole east wall was painted, but that it was painted down from the roof about 20 feet.

Q. Do you recollect the fact of the west front of the building being painted?

A. I do, in my part of it; that is, the windows and wood-work, the sash of the window inside and the window-casing on the outside at the same time. I can't tell when it was done.

Q. Do you recollect of the west front being painted more than once by Blake & Elliott?

A. No, I do not.

Q. Do you recollect whether the iron window-sills and cornices were ever painted?

A. I think the window-sills and caps were painted about the same time, but do not recollect about the cornices.

Q. Is there any other partition in the Advocate office, than the one you have spoken of as having been taken down and remodelled by Blake & Elliott, that has been repaired by Blake & Elliott?

A. There is none.

Q. When was the principal work done on that partition?

A. When the supports were put in.

Q. State the amount of subsequent work in proportion to the amount of the first work.

A. I should think from one-fifth to one-eighth.

Redirect:

Q. Was there not once a partition running north and south
482 from the east and west partition to the wall which now separates your counting-room from the printing-office?

A. Yes, there was.
Q. Was that partition also taken down or removed?
A. Well, it was removed; it was a ceiled one about three feet, and with a glass above; it was set further east, and finally removed altogether.

Recross-ex'n:

Q. Who built the last partition that you speak about?
A. Sandford and Tapley, at their own expense.
Q. Who changed the position of it when it was removed further east?
A. We did, at our own expense.
Q. Who removed it when it was finally removed?
A. I did, at my own expense.
Q. About when was it finally removed?
A. I should think in '63.

Redirect ex'n:

Q. Was there once a partition running north & south, extending from the ceiling some distance down, in the room now used by you as a printing-office? If so, describe it, and state what, if anything, was done with it.

A. There was a truss support for the Masonic floor extending
483 two feet deep, and from wall to wall, made of 4-inch scantling, and was in the middle of the block; it was removed by myself, I think. I have no recollection of Blake's having anything to do with it; I think that he was present. Blake & Elliott paid for the plastering of the space made by the removal.

A. C. SANDFORD.

484 *Deposition of Elbert O. Hand.*

Circuit court of the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Elbert O. Hand, in the above-entitled cause, taken on behalf of the defendants, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

FRIDAY, *July* 10*th*, 1874.

Present, D. G. Hooker, counsel for complainant; Cha's E. Dyer & J. T. Fish, counsel for defendants.

And the said ELBERT O. HAND, being duly sworn on behalf of defendants, deposes and says:

I am 42 years of age; am practicing law; reside in Racine. I occupied a room in the second story, on the east side of the Howland block, in December, 1861, to the fall of 1869. I recollect the erection of the Clement building, on the south side of the Howland block. I am unable to state the date. There were repairs made in my office after the erection of that building. The offices occupied by the firm of Lyon,
Adams and Hand were composed of three rooms, the partitions
485 running north and south, the east room being the private office and library, the middle room as the general office, and the west room as a store-room and wood-room. Upon the erection of the Clement building on the south side, the light was very much obstructed to the

middle and west rooms, so much so as to make them useless for offices. The two partitions running north & south were taken away, and one partition, running north and south, divided the offices into two rooms, what may be called the east and the west rooms, and this partition was composed mostly of glass, so as to throw some light into the west room; then the east room was divided by a partition running east and west, having a window at the east side of each room. The north room, after this last partition was made, was used for the library and private office, and south room for a general office. The glass partition was painted most of the way, and the sash painted, and the wood-work grained. I think we procured the most of the work to be performed. My impression is that the payment for the work was taken out of the rent. I think it was shortly after the walls of the Clement building were up, so that the light was obscured, that these alterations were made. I think Blake & Elliott were in possession of the property at that time.

486 Cross-examination:

Q. Were these repairs completed before the Clement building was finished?

A. I think they were. I think the north wall of the Clement building was up when this work was done.

Q. Do you recollect with whom you made the arrangement to have this work done and have it deducted from the rent?

A. I do not. The business connected with the alterations was done by my partner, by M'r Adams.

Q. Can you tell the amount which was deducted from the rent for these repairs?

A. No, I cannot; I have very little idea of it.

Q. Was your office in that building in the year 1863 the same office as Lyon and Adams'?

A. It was.

Q. Was your office the same as John Adams' in 1863?

A. It was.

Q. Was your office the same as John B. Adams'?

A. It was. It is my impression that the alterations were done by Blake & Elliott, but they might have been done by M'r Taylor.

Q. Are you judge of the county court of Racine County, and have you charge of the probate records of that county?

A. Yes, sir.

Q. Was the estate of Isaac Taylor settled in that court?

A. It was.

487 Q. Do you recollect the date of the death of Isaac Taylor?

A. I do not—November 13th, 1865.

Q. Will you furnish the date of his death, as appears by the probate records?

A. I will.

(To be furnished to the commissioner.)

ELBERT O. HAND.

It is hereby stipulated that Elbert O. Hand may send the date of the death of Isaac Taylor, as appears by the probate records, and the date be inserted by the commissioner as part of the answer on line of this page, which is admitted to be the true date.

FISH & LEE,
Att'ys for Def'ts.
DIXON, HOOKER & PALMER,
Solicitors for Compl't.

OFFICE OF COUNTY JUDGE,
Racine, Wis., July 11th, 1874.

Friend HOOKER:

DEAR SIR: I find, on examination of the papers in my office, that Isaac Taylor died November 13th, 1865.

Respectfully yours,

ELBERT O. HAND.

488 *Deposition of John Tapley.*

Circuit court of the United States for the eastern district of Wisconsin.
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of John Tapley in the above-entitled cause, being recalled on the part of the defendants, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office, in Milwaukee, Wis.

FRIDAY, *July 10th,* 1874.

Present, D. G. Hooker, counsel for complainant; Cha's E. Dyer & J. T. Fish, counsel for defendants.

And the said JOHN TAPLEY, having been previously sworn, deposes and says:

Q. While you were in occupation of the post-office room in the Howland block, as postmaster, were any repairs made by Blake & Elliott upon that part of the building? If so, name them, so far as you now recollect.

A. There were. There was a new floor, trap-door and stairs into the cellar, the post-office doors & windows were painted, and a drain opened or dug, I do not know which. The cellar got full of water, and the difficulty was remedied by work done there; and a new sidewalk
489 in front. My impression is that the platform was put up after my occupancy, but cannot tell whether M'r Taylor or Blake & Elliott did it. I went into possession about April, 1861, and remained till May, 1869. The repairs (except the rear platform, about which I am not certain) were made by Blake & Elliott.

Q. While you were occupying the post-office room were any other repairs made by Blake & Elliott on other parts of the building, which you observed? If so, state them.

A. The main stairway was rebuilt. There was something done to the chimney to remedy the smoking of them. The roof was newly gravelled and tarred while I was in the post-office. The cistern was cleaned and repaired during my occupancy of the post-office. There were irons placed to guard the cellar windows on the street. These irons were put there by Blake & Elliott.

Cross-examination:

Q. When did you leave the post-office?

A. In May, 1869.

Q. You spoke of a new sidewalk being built. Was that built along the whole building or in front of the post-office only?

A. I am not certain whether it was in front of the whole.
Q. When was that laid?
A. I can't tell the year.
Q. Was it done more than once?
490 A. My impression is that it was done more than once, but am not positive.
Q. Was the front of the building painted while you were in occupancy?
A. I have no recollection of any but the post-office room and the front of the post-office part.
Q. Was the front of the post-office part painted more than once?
A. I have no recollection of it.

JOHN TAPLEY.

491 *Deposition of F. W. Bruce, recalled.*

Circuit court of the United States for the eastern district of Wisconsin
In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

Deposition of F. W. Bruce in the above-entitled cause, being recalled on the part of the defendants, pursuant to notice given, before Edward Kurtz, one of the examiners in chancery of said court, at his office, in Milwaukee, Wis.

FRIDAY, *July 10th*, 1874.

Present, D. G. Hooker, counsel for complainant; Cha's E. Dyer & J. T. Fish, counsel for defendants.

And the said F. W. BRUCE, having been previously sworn, deposes and says:

Q. Since you have occupied one of the store-rooms in the Howland block what repairs, if any, have been made by Blake & Elliott in your store?
A. They repaired the ceiling overhead where the mortar fell off, and afterwards put an entire new wood ceiling over the plastering, and painted it one coat when it was put up. They repaired the floor by putting a piece of new floor, and since we occupied the store laid two walks in front of the store. They repaired the doors and win-
492 dows in the cellar. They have, I think, twice repaired the steps at the rear end of the store. They painted the front of the store inside and out, as many as three times, and also painted the rear end of the store, the doors and windows and wood work around the stair and cellar case two or three times, & furnished a new rope for the hoisting-apparatus, and this last winter painted the ceiling two coats. I do not remember of any other repairs in the store, except putting a cross-bar under the hatch. They have had several times to clear out & open the drain on account of the cellar filling up with water.
Q. State generally, if you know, what other repairs outside of your store they have made upon the building.
A. When they first came in possession of the store they attempted to repair the roof, to prevent it leaking, on several different occasions, and finally changed the roof and recovered it. They took down the

top of the wall probably 10 or 12 feet, and fixed it with mortar or cement of some kind, and for about 5 or 6 feet from the top they covered the mortar with boards. They made walks in front of the entire block twice, and also a gutter between the sidewalk and the road once, and I think twice. They put in new stairs in the stairway going into the upper part of the building, and also laid considerable new floor
493 at the top of the stairs, and enlarged the chimney which is used from our store by taking out the brick on one side of it and making the flue of the chimney, I think, twice its former size. The enlargement extended from the top of the first story to the top of the chimney. They filled up three windows on the south side of the building with brick, and put iron shutters on two windows on the south side. They built a small shed for us for the storing of oil. They had the privy removed and the vault cleaned. They laid a brick floor and drain in the cellar under the post-office. There were supports placed under the floor of the Masonic Hall. They replaced glass in our store-front that was broken by cannon one Fourth of July. They painted the front of the building—I mean the window-frames, casings, and store-fronts. I think the lower part of all of them have been painted three times on the outside. The windows and cornice of the upper stories have been painted once on the outside, and I think twice. I am not positive. The rear end of the building was painted two coats from about the top of the second story to the top of the building, brickwork; the window-casings, and sills and sash have, I think, been painted twice.

Q. Has there any work been done on the windows in your
494 store and in other parts of the building, including sky-lights?

A. The sky-lights have been repaired. Blake & Elliott have repaired the sky-lights two or three times, and put in glass. I think I stated that glass had been put in the cellar-windows. If I had not, I will now. We done the work of putting in the glass, and charged it to Blake & Elliott.

Q. By whom have the repairs been generally made; what persons worked on the building?

A. M'r Charles Bunce has usually. He is in the employ of Blake & Elliott, and has done a great portion of the carpenter-work, but M'r Elliott has usually superintended all the repairs.

Q. What repairs have been made, if any, in the Masonic-lodge room?

A. There was a large, nice door put there to correspond with the other doors in the hall. The cornice was repaired; repairing done to the floor where the gas-pipes passed through the centre of the hall, but I don't know who paid the expenses of them.

Cross-examination:

Q. How long have you occupied that store?

A. Since, I think, some time in 1860 to the present time.

Q. When you spoke of the upper part of the east brick wall having been painted two coats, did you mean that it was done at the same time?

A. It was done at the same time.

495 Q. When was the sidewalk in front of the building relaid by Blake & Elliott the first time?

A. I really could not tell.

Q. When was it relaid the second time?

A. It was relaid the last time in 1870 or 1871. I am not positive that it was relaid more than twice or not.

Q. If the walk was laid by them in 1865 the first time, should you be of opinion that it had been laid by them three times?

A. No; not if they had made a good job of it the first time.

Q. If it had been laid each time with 4 x 4 inch stringers, 12-inch curb, & with three-inch plank each time, would you be of the opinion, assuming that it had been laid the first time in 1865, that it had, in fact, been laid by them three times?

A. I should think not.

Q. How long should such a sidewalk as I have supposed wear in front of that building if properly constructed?

A. I think six years.

Redirect ex'n:

Q. What thickness of plank have they used for sidewalk?

A. I think the last walk before this present one was two-inch plank; the plank in the walk that is down now, I think, was three inches and dressed down on both sides.

F. W. BRUCE.

496 Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT.

Deposition of Lucius S. Blake, one of the defendants, recalled in their behalf in the above entitled cause, before Edward Kurtz, one of the examiners in chancery of said court, at his office in Milwaukee, Wis.

SATURDAY, *July 11th*, 1874.

Present, D. G. Hooker, counsel for complainant; C. E. Dyer & J. T. Fish, counsel for defendants.

And the said LUCIUS S. BLAKE, being recalled by def'ts, deposes and says:

Q. M'r Lefler has testified that after he left the employ of Blake and Elliott in 1861 you repeatedly applied to him to employ him again, and that you once offered him $200 more than he had been getting; is that true?

A. It is not true, to my knowledge.

L. S. BLAKE.

497 *Def'ts Exhibit No. 13, referred to in deposition of T. H. Davis.—Edw. Kurtz, Ex'r in Chancery.*

RACINE, *July 8th*, 1874.

Estimate of repairs on the Howland block:

To framing, post, and brace partition in Advocate's office, labor and material	$65 00
To taking out and replacing 46 white-oak steps in stairs	36 80
To cutting out and replacing 140 feet of matched flooring	8 40
To labor and material on 1,700 f't of matched flooring on old floor	85 00
To 2 x 12 light, 9 x 18 braced frames and sash, complete	32 00
To 110 feet double-faced matched partition, with sliding door, complete	11 00

To cutting out and relaying 400 feet of matched flooring	24	00
To 1 glass partition, 48 lights, 10 x 14, glass all complete	16	00
To 114 feet double-faced matched partition, with moulded cap and door complete	15	00
To 160 feet stud and sided wall on west gable of roof	12	80
498 To 180 feet of valley gutter on roof	50	00
To building scaffold and taking down east gable and rebuilding with wood walls	80	00
To two new roof-scuttles	16	00
" 1 pannel partition, glazed sash, 80 lights 11" x 17", 1 door, slideing sash	45	00
Painting	8	00
" 1 lath and plaster partition, 1 door complete and base	37	32
" 266 feet of matched flooring laid twice in post-office	13	30
140 f't matched flooring in P. O	7	00
" 260 f't ½-inch cealing in Burch & Bruce's store	87	00
" 60 lineal feet of sidewalk with 4 x 4¼ stringers, 12-inch curb laid with 3-inch plank, laid three times	175	00
" eight sets of inside blinds, windows, 8 lights, 15 x 22 glass	114	00

THOMAS H. DAVIS,
Builder.

499 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, an examiner in chancery of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing depositions of George W. Slawsen, Frederick W. Bruce, Lucius S. Blake, Lewis C. Osborn, James T. Elliott, Thomas H. Davis, William S. Buffham, George Q. Erskine, Adam C. Sandford, Elbert O. Hand, and John Tapley, were taken before me, pursuant to notice duly given, and by consent of the counsel of the parties. That I was attended by the said counsel at the times and place as stated in the captions of said depositions, and by the said witnesses, who were of sound mind and lawful age, and that said witnesses were by me first duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions then by me reduced to writing in the presence of said witnesses respectively and from their statements, and after carefully reading the same over to said witnesses respectively, they subscribed the same in my presence, except as to the depositions of Adam C. Sandford, Elbert O. Hand, and John Tapley, which were reduced to writing by my clerk, M'r W. J. C. Forster, and by him read over to said witnesses by consent of said counsel, and subscribed in his presence & in presence of said counsel.

I further certify that I am not of counsel or solicitor for either of the parties in the said depositions & captions named, nor in any way interested in the event of said cause. I have retained said depositions in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same were taken.

500 In witness whereof I have hereunto set my hand this 8th day of August, A. D. 1874, and of the Independence of the United States the 99th.

EDWARD KURTZ,
Examiner in Chancery of the U. S. Cir. C't, E. Dist. Wis.

I further certify that the exhibit referred to in deposition of T. H. Davis, and marked by me "Def'ts' Exhibit No. 13," was produced before me, and is hereto annexed.

EDWARD KURTZ,
Examiner in Chancery.

501 In the circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND, COMPLAINANT,
against
LUCIUS S. BLAKE AND JAMES T. ELLIOTT,
defendants.

To Eugene Howland, the above-named complainant:

Take notice that on the 30th day of April, A. D. 1874, at ten o'clock in the forenoon, by Laban H. Ainsworth, a U. S. court commissioner, at his office in the city of Watertown, county of Jefferson and State of New York, your deposition will be taken in the above-entitled cause, as also the depositions of Jerome Howland, Ozial Howland, his father, and Phineas Hardy, all on the part and behalf of the defendants in said cause, to be used and read at the hearing and trial of the said cause, at which time and place you are hereby notified to be present to put such interrogatories as you think fit.

Dated April 29, 1874.

Yours, &c.,

LUCIUS S. BLAKE.
502 JAMES T. ELLIOTT.
FISH & LEE,
Solicitors for Defendants.

FISH & LEE,
Defendants' Solicitors, Racine, Wis.

Service of within notice is hereby admitted this 29th day of April, A D. 1874.

E. HOWLAND,
Complainant.

503 *Deposition of Eugene Howland.*

Circuit court of the United States for the eastern district of Wisconsin. In equity.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

Depositions in the above-entitled cause, taken pursuant to notice given, which is hereto annexed, by and before Laban H. Ainsworth, a United States circuit court commissioner in and for the northern district of New York, at his office in said dist., at the city of Watertown, in said district, on the 30th day of April, 1874, at ten o'clock in the forenoon, which depositions are taken to be used on the hearing of the said action in said court on the part and behalf of the defendants.

Jno. T. Fish appeared for the defendants, and the complainant, Eugene Howland, appeared in person, and C. D. Wright, his counsel.

Complainant objects to taking the depositions on the ground that requisite notice has not been given, no notice having been given to complainant's solicitors, and but 24 hours' notice to complainant, and, further, that the officer, M'r Ainsworth, is not authorized to take the
504 evidence, and the requisite steps to give such authority have not been taken. I have therefore proceeded with the said examination.

And I hereby certify that the said Eugene Howland was by me carefully cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause.

EUGENE HOWLAND, a witness sworn on the part of the defendant, testifies as follows: Age, 47 years; residence, town of Watertown, N. Y.; am a farmer; am complainant in this suit. I know M'r Blake. I saw him some 15 or 16 years ago; never had any acquaintance with him. Do not know as I ever knew M'r Elliott. Ozial Howard is my father. Richmond W. & Jerome are my brothers. For the last twenty years I have spent ten years in California & Oregon; a year and ten months in Racine, Wis., and some eight years in Jeff. Co., N. Y. First went to Racine, Wis., in the spring of 1850, remained there about ten days, went to Sheboygan and Mich., also, and was absent from New York State about three months. Took with me when I left home some $250, spent $50, and left with R. W. Howland $200; he loaned the money from me. He was in the book business; gave me no note or due-bill. I next visited Racine in the spring of 1852. I left home the 15th day of April. I was probably at Racine this time about two weeks; took with me at
505 this time $175.00. I used it in company with three other men in fitting out to go to California. I did not buy any property at Racine. I did not authorize any one to buy any for me at that time.

Did you ever authorize any person to buy lots 3, 4, & 12, in block 18, 1st ward, Racine, Wis., for you?

I don't remember that I did. I think the three lots were bought before I went *before I went* to California, and deeded to me. I did not know of the purchase at the time, or before, but was told of it afterwards. I could not say who told me. I did not pay any part of the purchase-money.

Did you ever pay any part of the purchase-money?

I lived at home until I was 25 years old, and never had drawn any money from my father except the $250 & the $175 mentioned before. I suppose there was my due from home more than the $500 paid down on the purchase-money. I can't tell who paid the $500. I don't remember as Richmond ever told me who paid the $500 down. I understood that there was a mortgage given for the balance of the purchase-money. I sent money to my agent at Racine, to the amount of—I don't know as I can give the exact amount, I should think some $1,700; it was sent when I was in California, about the year *in* 1855, but am not certain. It was sent after I had determined to build; a portion
506 of it, I think—I think the most of it—was sent after I had determined to build the block. I have *not* memorandum with me.

Q. Is the $1,700 all the money you ever sent to Racine, or took there yourself, to pay for the lots or the erection of the building now standing on lot 12?

I took more. I gave it to my brother, but how it was used I could not say; took a draft of $600, think it was, in 1857 or 1858, when I come from California. It was borrowed by me of Phineas Hardy. Richmond W. was building the block at the time. It was not borrowed

for Richmond in the book business. The whole sum borrowed by me in person, of M'r Hardy, was $600. I never repaid M'r Hardy. That was all the money I think of that I personally took or sent there. Richmond had a power of attorney to do business for me. I was last in Racine 15 years ago last Nov. That is the last time I was ever there.

What was the state of the title to the Howland block, at that time, as to mortgages & judgments, taxes liens and mechanics' liens?

I did not know; Richmond took full charge of the matter. I knew of the Taylor mortgage; it was first given for $7,000. I knew of the lien of Rattan & . I knew of Hardy's mortgage. I knew there
507 was quite a large indebtedness for material & labor.

Did you not, at the last time you left Racine, regard the property and the money *and the money* you had put into it as lost?

I thought if the rents could be saved and applied on the indebtedness, the building could be saved in time. Considering what I understood the building cost, and the value of the land, I thought there was quite a property there. I had hopes at that time of saving it. I went to California after that. I received a copy of the summons and complaint in the case of Isaac Taylor against me & others, to foreclose the mortgage. I think the papers were destroyed. After I rec'd those papers, and before this suit was commenced, I did not write to Richmond W. Howland. I did not rec. any letters from him in regard to the property. I first learned, last summer, in June, that Blake & Elliott had taken title to the property conditionally. I learned it from R. W. Howland; saw him at my house. We did not figure up our interest at all. I don't know but I stated that I had sent $1,700. I think he said he didn't think I had sent so much; something near that amount. He did not say about what he had put into the property. Before I went to California, the last time, R. W. Howland asked me to deed the property to
508 his wife. I told him I would not do it. Before this my brother said to me that Blake said that I would prove traitor to him, and throw him out of everything. I told him I had never betrayed my trust anywhere. At one time I said to him, if he would select some good man I would surrender things up to him. I don't remember what reply he did make. When he said that Blake said that I would prove traitor, he carried the idea *the idea* that I would not pay him for anything he had done for me; he had acted as agent in erecting the building, his labor, etc., that is what I supposed he me'nt. I have never paid him anything for his labor.

Did you ever personally furnish or pay any money on ac. of that property in Racine, except what you have already stated in this deposition?

No, sir. R. W. Howland bought an old stock of goods in my name to the amount of some $4,000. It was the Howland & Adams stock; R. W. Howland & Moses Adams. The proceeds, I suppose, went into this building. R. W. Howland gave my notes for the goods. I don't know as the notes were ever paid. R. W. did all the business. I never sent or furnished any money to pay them. I think part of the notes were paid before I left there. These goods were bought of the assi'nee of Howland & Adams. R. W. Howland gave me no papers while here last summer.

509 What reason, if any, did R. W. Howland give you for coming down here last summer?

He said that M'r Blake & Elliott had bought the building conditionally; after the rents had paid up the obligations against the building it should come back to me again, and they refused to give it up, and he told them there would be a rec'oning. He said the rents had amounted to

$10,000 more than the indebtedness. He said he was obliged to commence suit to get my rights. He said he wanted to see me before he commenced the suit. I told him if things were as he stated I was willing he should commence a suit. He said there had been a reserve in the Taylor sale, and the same in the sale to Blake & Elliott. I thought if it was so it was right for me to try and get my rights. He said he wanted to see me, as he did not know but they would come down and try to settle with me, and I not knowing how the arrangement was, I might settle in a way that would not be right. I told him I would not settle with them. I might have settled, I told him, if I had not seen him. I told him I wanted each & every one to have their rights, as far as it could be divided. I had reference to those he had borrowed money of to erect the building. I meant Kingsley, Erskine, and all who had furnished anything toward the building.

510 Question. Did you mean the same interest also of Richmond W. Howland, that you had in view when you told him you had never proved traitor to any one at any time?

A. All I me'nt was his interest and services for care and labor.

Did he & you talk at the time he was here as to the amount he had put into that block, for time, labor, materials, and money?

Did not.

Did you not have a talk with Richmond W. Howland as to his equitable interest in that property?

No, sir; did not.

Did you not say to him in that conversation (I mean during the time he was here) that all that you wanted was the money that you had put in, and the work that you had done, or words to that effect?

A. I told him all I wanted was my rights.

(Question repeated.)

Ans. Don't know that I did.

Question. Did you not in conversation with him, while here at your place or at your father's, say that all you wanted was pay for the work you had done and for the money you had furnished in buying that property and building the building, and did you not then talk as to

511 how much money you had furnished and how much work you had done, or conversation to the same effect?

Ans. I have answered a part of that—the forepart; we talked about how much money I had furnished, but not about the work I done.

Ques. Did you not say to him, in substance, that you wanted pay for just what you done, & for the money you had furnished, or words to that effect?

Ans. I think I did; but don't know as there was anything said about what I had done.

Q. Did you know one Geo. Q. Erskine, of Racine, before you went to California the last time?

Ans. I knew him.

Q. In conversation with him before leaving, did you say that all that you had had been lost in building that block, and that you had nothing left, or words to that effect?

Ans. I don't remember of saying it.

Q. Do you know who paid Phineas Hardy the amount due him for money loaned to you?

A. I do not.

Q. After returning to Cal., in the summer of 1860, did you succeed in making any money there? If so, when and how much?

A. It was very little I saved.

Ques. What time did you go to Cal. the last time?
Ans. In July, 1860.
Q. Where were you when you rec'd the papers in the foreclosure suit?
512 A. In California.
Q. About how much money did you save from the time you arrived in Cal. till 1865?
A. I used up about all I made; I do not remember the am't. I sent home to pay the expenses of my family, & I don't think there was anything saved when I got home.
Q. What property have you at this time?
A. All I have is at Racine.
Q. How large a farm are you living upon?
A. About 140 acres; have about 20 cows, one horse-team. I have nothing to do with it myself. It is in my wife's name. It was bought about eight years ago.
Q. How much money did you send home, & how much did you bring home from Cal.?
A. I did not bring any home. I don't know how much I sent home.
Q. State the amount as near as you can from recollection.
A. I presume the whole did not exceed four hundred dollars ($400).
Q. How much money did your father pay to R. W. Howland, or give him for you, as you understood it?
A. I don't know.
Q. How much did R. W. Howland, or your father, tell you that he gave to R. W.?
(Objected to as incompetent.)
513 A. I don't know. R. W. done my business. Neither of them ever told me anything about it.
Quest. Since returning from Cal. how near have you live' together?
A. From six to eight miles. Have been on friendly terms during all that time.
Q. When leaving Racine the last time did you give R. W. Howland any directions to write to you or any other person about your business?
A. I told him to care for the property, & he said he would. I don't remember as I told him about writing. I don't remember what was said.
Q. Did you ever write any letter to him or any one else enquiring about the property?
A. No, sir.
Q. Did you ever receive any letter from him in regard to the property?
A. No, sir.
Q. Do you know whether or not the Hardy mortgage was cut off by the foreclosure of the Taylor mortgage?
A. I do not. I have never heard whether it was or not.
Q. From whom did R. W. Howland say that he learned that Blake & Elliott were not going to keep their agreement?
A. I don't remember.
514 Q. Did he not say to you while here last summer that he learned from Elliott that they were not going to keep their agreement, which was the reason he left their service and went to work for some one else?
A. I don't remember what was said.
Q. M'r Howland, did you say yesterday, in the presence of myself, to M'r Blake that R. W. Howland told you last summer that he learned from Elliott, while he was at work for Blake & Elliott, that Blake &

Elliott were going back on their agreement, and that was the reason he left their service; and did we reply to you that Richmond had testified that he never spoke to Elliott about it?

A. I think I did say so, but I am not sure that Richmond stated it.

Q. Did you ever let Richmond W. Howland have any money or property in his business or otherwise except as you have stated in this deposition?

A. No, sir.

Q. Did you ever request any one else to let him have any money or property for you except as expressed in the deposition, and by virtue of the general power of attorney that he had from you?

A. Not that I remember of.

515 Q. Was Phineas Hardy a man of property at the time of the sale on the Taylor mortgage?

A. He was said to be a man of considerable means—a large farmer.

Q. Did you understand that he was able to have bought the property at the time of foreclosure of the Taylor mortgage?

A. I don't know personally, but I suppose he was.

EUGENE HOWLAND.

NORTHERN DISTRICT OF NEW YORK,
County of Jefferson, ss:

I, Laban H. Ainsworth, circuit court commissioner for said northern district of New York, at said Watertown, in said district, further certify that the preceding deposition was reduced to writing by Byron B. Adsit, under my direction, with the consent of the complainant and the defendants, and was carefully read over to the said Eugene Howland, and was signed by him in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

And I further certify that said Eugene Howland was carefully examined and sworn to speak the truth, the whole truth, and nothing but the truth, in the above-entitled action, before said deposition was taken.

516 In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Watertown, this 30th day of April, 1874.

[SEAL.] L. H. AINSWORTH,
U. S. Comm'r.

517 *Def'ts' Exhibit No.* 1.

Deed from Isaac Taylor & W. to Cha's Clement.

This indenture, made this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-two, between Isaac Taylor, of the city and county of Racine, in the State of Wisconsin, and Emeline, his wife, parties of the first part, and Charles Clement, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm unto the said party of the second part, her heirs and assigns, forever, all that certain piece or parcel of land situated in said city of Racine known as the

north ten (10) feet of the lot number four (4) in block number eighteen (18) according to the original plat of Racine made by Moses Vilas, surveyor, and recorded in the office of the register of deeds of said county of Racine, being a strip of land ten (10) feet wide off the entire north side of said lot, to be used as an alley for the benefit of the building on the north half of lot number eleven (11) in said block number eighteen (18), in common with the said party of the first part, his heirs and assigns. Also the right to tap and to use the drain built by said
518 Taylor across the north ten feet of lot number four (4) in said block; also part of the south wall of the building known as Howland's block, on lot number twelve (12) in said block number eighteen (18), to wit: The whole south half of said wall, from the southwest corner of said Howland's block, extending east a distance of forty-nine and eight-twelfths ($49\frac{8}{12}$) feet, and from a point that is forty-nine and eight-twelfths ($49\frac{8}{12}$) feet easterly from said southwest corner of said Howland's block "to the southeast corner of said Howland's block;" the whole of the south half of said south wall, extending from the bottom of said wall as high as the floor of the second story of said Howland's block, and the free and undisturbed use and occupancy of the ground upon which said wall stands until such time as said wall shall be destroyed by fire or other casualty. Also a right to anchor or fasten a building now in process of erection by said party of the second part to said south wall of said Howland's block, said building now in process of erection being situated upon lot number eleven in said block number eighteen (18), together with all and singular the hereditaments and appurtenances thereto in any wise appertaining, and all the estate, right, title, possession, claim, and demand, in law or in equity, of the said parties of the first part therein and thereto.

519 To have and to hold the same unto the said part' of the second part, his heirs and assigns, to his & their sole use forever. And the said Isaac Taylor, one of the parties of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant with the said party of the second part, his heirs, executors, administrators, and assigns, that at the time of the delivery of these presents he is well seized of the above-granted premises, as of an indefeasible estate of inheritance in fee-simple; that the same are free and clear from all liens and incumbrances whatever, and that in the quiet and peaceable possession and enjoyment of the said party of the second part, his heirs and assigns forever, against all persons lawfully claiming the same, or any part thereof, he will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

I. TAYLOR. [SEAL.]
EMELINE TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
DANIEL SLAUSON.
ALBERT G. KNIGHT.
FRANK J. TAYLOR.

STATE OF WISCONSIN,
County of Racine, ss:

On this twenty-fourth day of July, A. D. 1862, came personally before the subscriber, a notary public residing in said county, Isaac Taylor and Emeline, his wife, to me well known to be the persons
520 described in and who executed the above conveyance, and ac-

knowledged that they had executed the same and for the uses and purposes therein set forth.

Given under my hand & notarial seal.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

Rec'd for record July 31st, A. D. 1862, at 4 o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Isaac Taylor to Cha's Clement is a true and perfect copy of the original, of record in my office, as recorded in volume 43 of deeds, on pages 54 & 55; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Def'ts' Exhibit No. 2.

521 Deed.—Sheriff Racine Co. to Isaac Taylor.

This indenture, made the nineteenth day of June, in the year of one one thousand eight hundred and sixty-two, between Horatio T. Taylor, sheriff of the county of Racine, of the first part, and Isaac Taylor, of the same place, of the second part.

Whereas, at the February term of the circuit court, State of Wisconsin, held in and for the county of Racine, at the court-house in the city of Racine, in said county, on the twenty-sixth day of February, one thousand eight hundred and sixty-two, it was, among other things, ordered and adjudged by the said court, in a certain action then pending in the said court between Isaac Taylor, plaintiff, against Eugene Howland, Phineas Hardy, John W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millet, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jameson, j'r, and Elias Manchester, defendants, that all and singular the mortgaged premises mentioned in the complaint in said action and in said judgment described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal,
522 interests, and costs in said action, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to the course and practice of said court, by or under the direction of the sheriff of the county of Racine; that the sale be made in the county where the said mortgaged premises are situate; that the said sheriff give public of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said sheriff execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of con-

veyance for the same; and whereas the said sheriff, in pursuance of the said judgment of the said court, did, on the nineteenth day of June, A. D. 1862, sell at public auction, at the court-house in the city and county of Racine, and State of Wisconsin, the premises in the said judgment mentioned, due notice of the time and place of such being first given, agreeably to the said judgment, at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of nine thousand three hundred dollars ($9,300.00), that being the highest sum bidden for the same:

523 Now the indenture witnesseth that the said sheriff of the county of Racine, the party of the first part to these presents, in order to carry out into effect the sale so made by him as aforesaid in pursuance of the judgment of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, *the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part*, all that certain piece or parcel of land situate in the first ward of said city of Racine, known and described as lot number twelve (12), in block number eighteen (18), as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record*ed* in the office of register of deeds in and for said county of Racine:

To have and to hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit, and behoof, forever.

524 In witness whereof the said Horatio T. Taylor, sheriff as aforesaid, hath hereunto set his hand and seal the day and year first above written.

H. T. TAYLOR, [SEAL.]
Sheriff of the County of Racine.

In presence of—
JESSE D. BURCH.
C. E. DYER.

STATE OF WISCONSIN,
County of Racine, ss:

On the nineteenth day of June, one thousand eight hundred and sixty-two, before me came Horatio T. Taylor, known to me to be the individual described in and who executed the above conveyance, and acknowledged that he executed the same.

J. L. BERCH,
Notary Public.

Rec'd for record Oct. 6, 1862, at 3 o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from sheriff Racine Co. to Isaac Taylor is a true and perfect copy of the original of record in my office, as recorded in volume 43 of deeds, on pages 145 & 146; that I have compared the same with said original, and hereby

certify that the annexed and foregoing is a full, complete, and perfect copy of said original and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county and State aforesaid.

WILLIAM G. HYDE,
Register of Deeds Racine County.

525 *Defendants' Exhibit Number* 3.

Deed.—Sheriff Racine County to Daniel P. Rhodes.

To all to whom these presents shall come, greeting:

Know ye that I, William G. Everit, sheriff in and for the county of Racine, in the State of Wisconsin, by virtue and in pursuance of a writ of execution placed in my hand for collection on the first day of March, A. D. 1860, in an action in the circuit court in and for the county of Racine and State of Wisconsin, wherein Stephen Wiltse and Peter Hetrick was plaintiff, and Eugene Howland and Isaac Taylor was defendants; which execution, and the endorsements thereon and annexed thereto, are in the words and figures following, that is to say:

The State of Wisconsin to the sheriff of the county of Racine, greeting:

Whereas judgment was rendered on the 23rd day of April, one thousand eight hundred and fifty-eight, in an action to enforce a mechanic's lien on certain premises, in the circuit court for the county of Racine, State of Wisconsin, between Stephen Wiltsie and Peter Hetrick, plaintiffs, and Eugene Howland and Isaac Taylor, defendants, in favor of the said Stephen Wiltsie and Peter Hetrick, against said Eugene Howland and Isaac Taylor, to enforce a mechanic's lien, and personally the said Eugene Howland, for the sum of five hundred sixty-six and $\frac{34}{100}$
526 dollars damages, and forty-three dollars and fifteen cents ($43.$\frac{15}{100}$) costs, as appears by the judgment-roll on file in the office of the clerk of the circuit court for the county of Racine; and whereas said judgment was docketed in your county on the 23rd day of April, one thousand eight hundred and fifty-eight, and the sum of six hundred nine and $\frac{40}{100}$ dollars, with interest thereon from the 23rd day of April, one thousand eight hundred and fifty-eight, is now actually due thereon: Therefore, we command you that you satisfy the said judgment out of the property described in said judgment, and if that proves insufficient, then out of the personal property of said Eugene Howland, in your county; or if sufficient personal property cannot be found, then out of the real property, in your county, belonging to the said Eugene Howland on the day when the said judgment was docketed in your county, or at any time thereafter, in whose hands soever the same may be, and return this execution within sixty days after its receipt by you to the clerk of the circuit court of Racine.

Witness the Hon. David Noggle, circuit judge of the first judicial circuit, the first day of March, one thousand eight hundred and sixty.

[SEAL.] LA FAYETTE PARKER,
Clerk.

STRONG & FULLER,
Pl'ff's Att'ys.

On the back of foregoing execution were the following endorsements, to wit:

To the sheriff of Racine County, in the State of Wisconsin:

527 In pursuance of a judgment of the circuit court for the county of Racine, made in this cause, a certified copy of which is hereunto attached, you are hereby directed to levy this execution upon and sell the brick building standing on all that certain piece or parcel of land situated and being in the city of Racine, county of Racine, and State of Wisconsin, known and described as follows, to wit: Lot number twelve (12) in block number eighteen, as the same is marked and designated on the original plat of the village of Racine, made by Moses Vilas, and on record in the office of register of deeds in and for the county of Racine, and also all the right, title, and interest of the defendant Eugene Howland of, in, and to the above-described piece of land on the 27th day of March, A. D. 1857.

Racine, 1st March, A. D. 1860.

STRONG & FULLER,
Pl'ff's Att'ys.

Attached to foregoing execution was a copy of said judgment, which judgment is in the words and figures following, that is to say:

STATE OF WISCONSIN,
Circuit Court for the County of Racine:

STEPHEN WILTSIE AND PETER HETRICK, plaintiffs, *against* EUGENE HOWLAND & ISAAC TAYLOR, defendants. } Copy of judgment.

528 It is ordered and adjudged that the above-named plaintiffs do recover against the said defendant Eugene Howland the sum of five hundred and sixty-six dollars and & thirty-four cents damages, and interest thereon from the second day of December, 1857, together with the costs and disbursements of this action, adjusted and taxed at the sum of thirty-eight dollars and twenty-seven cents, which damages, interest, and costs amount to the sum of six hundred and twenty dollars and thirteen cents; that the same is a lien upon the brick building standing on all that certain piece or parcel of land situated and being in the city of Racine, county of Racine, and State of Wisconsin, known and described as follows, to wit: Lot number twelve (12) in block number eighteen, as the same is marked and described on the original plat of the village of Racine, made by Moses Vilas, and now on record in the register's office of Racine County, and also upon all the right, title, and interest of the defendant Eugene Howland of, in, and to the above-described piece of land from and after the 27th day of March, A. D. 1857, and that the said brick building, and the interest aforesaid of said Howland in said above-described premises, be sold for the same according to law in such cases made and provided, and that said defendant Isaac Taylor have the right to redeem the same at any time prior to the sale thereof.

Dated April 23rd, 1858.

LA FAYETTE PARKER,
Clerk.

529 STATE OF WISCONSIN,
Racine County, ss:

I, La Fayette Parker, clerk of the circuit court for said county, hereby certify that the foregoing is a true and correct copy of a judgment remaining on file and of record in my office in the above-entitled action, and the whole of the same.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Racine, in said county, this 4th day of April, 1859.

[SEAL.] LA FAYETTE PARKER, *Clerk.*

I, William G. Everit, sheriff as aforesaid, on the first day of March, A. D. 1860, in pursuance and by virtue of said judgment, did levy upon the real estate and premises, and the brick building standing thereon, of the defendant, Eugene Howland, hereinbefore and hereinafter described, and did on the 1st day of March, A. D. 1860, cause a notice of the sale of said real estate to be posted up in three of the most public places in the city of Racine, where the said premises are situated, said notices being fastened up for six successive weeks immediately prior to said day of sale, and I did cause a copy of said notice to be published in the Racine Weekly Journal, a public newspaper printed in said Racine County, once in each week for six successive weeks immediately prior to said day of sale, and was in the words and figures following, to wit:

530 *Sheriff's sale.*

Circuit court for the county of Racine, Racine County.

STEPHEN WILTSIE AND PETER HETRICK, plaintiffs,
against
EUGENE HOWLAND & ISAAC TAYLOR, defendants,

In pursuance and by virtue of a judgment of the circuit court for the county of Racine made in the above cause, and by virtue and in pursuance of an execution issued out of said court to enforce a mechanic's lien on certain premises hereinafter described, and to me directed and delivered, I have levied and shall expose to sale at public auction, as the law directs, at the court-house in the city and county of Racine and State of Wisconsin, on Saturday, the 14th day of April, A. D. 1860, at two o'clock in the afternoon of that day, the following-described property, to wit: The brick building standing on all that certain piece or parcel of land situated, lying, and being in the city and county of Racine and State of Wisconsin, and known and described as follows, to wit: lot number twelve (12) in block number eighteen (18), as the same is marked and designated on the original (plat) of the village of Racine, made by Moses Vilas, surveyor, and recorded in the office of the register of deeds in and for said county of Racine, and also all the right, title, and interest which the defendant, Eugene Howland, had of, in,
531 and to the above-described piece of land on the 27th day of March, A. D. 1857.

Terms cash.

Dated at sheriff's office, March 1st, A. D. 1860.

WM G. EVERIT,
Sheriff of Racine County.

STRONG & FULLER,
Plaintiffs' Attorneys.

The above sale is adjourned until the 1st day of May, A. D. 1860, at the same time and place.

WILLIAM G. EVERIT,
Sheriff of Racine County.

STRONG & FULLER,
Plaintiffs' Attorneys.

The above sale is adjourned until Tuesday, the 22nd day of May, A. D. 1860, at the same time and place above mentioned.

W'M G. EVERIT,
Sheriff of Racine County.

STRONG & FULLER,
Plaintiffs' Attorneys.

And on the day and at the place named in said adjourned notices of sale, that is to say, at the court-house, in the city and county of Racine, and State of Wisconsin, on the 22nd day of May, A. D. 1860, at two o'clock in the afternoon of that day, I, William G. Everit, sheriff as aforesaid, did publicly offer said premises and brick building standing thereon at public vendue, and did then and there sell the same to Daniel P. Rhodes for the sum of one thousand dollars ($1,000.00), he being the highest bidder therefor, and that being the highest sum bidden for the same. Now, therefore, know ye that I, William G. Everit, sheriff of the county of Racine as aforesaid, by virtue of the premises hereinbefore recited, and of the statute in such case made and provided,
532 and in consideration of one thousand dollars to me in hand paid by the said Daniel P. Rhodes, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Daniel P. Rhodes, his heirs and assigns, forever, the brick building standing on all that certain piece or parcel of land situated, lying, and being in the city and county of Racine, and State of Wisconsin, known and described as follows, to wit: *known and described as follows, to wit:* Lot number twelve (12), in block number eighteen (18), as the same is marked and designated on the original plat of the village of Racine, made by Moses Vilas, surveyor, and recorded in the office of register of deeds in and for said county of Racine; and also all the right, title, and interest which the said defendant Eugene Howland had of, in, and to the above-described piece of land on the 27th day of March, A. D. 1857:

To have and to hold the said real estate and premises, and every part thereof, with all the appurtenances thereto belonging or in anywise appurtaining unto the said Daniel P. Rhodes, his heirs and assigns, forever, as fully and absolutely as I, the said William G. Everit, as sheriff as aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof I have hereunto set my hand and seal this 22d day of May, A. D. 1860.

533 WILLIAM G. EVERIT, [SEAL.]
Sheriff of Racine County.

Signed, sealed, and delivered in presence of—
H. T. TAYLOR,
SAMUEL RITCHIE.

STATE OF WISCONSIN,
Racine County, ss:

On this 22nd day of May, A. D. 1860, personally came before me, a

notary public in and for said county of Racine, William G. Everit. sheriff of Racine County, well known to me to be the person described in and who executed the foregoing deed, and acknowledged to me that he had executed the same for the uses and purposes therein set forth.

SAMUEL RITCHIE,
Notary Public.

Received for record July 31, A. D. 1862, at 10 o'clock a. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wis., do hereby certify that the annexed and foregoing copy of deed from sheriff Racine County to D. P. Rhodes is a true and perfect copy of the original of record in my office, as recorded in volume 43 of deeds, on pages 57, 58, 59, & 60; that I have compared the same
534 with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county & State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

535 *Def't's Exhibit No. 4.*

Copy deed.—D. P. Rhodes & W. to I. Taylor.

This indenture, made this twenty-third day of July, in the year of our Lord one thousand eight hundred and sixty-two, between Daniel P. Rhodes, of Cleveland, in the State of Ohio, and Sophia, his wife, parties of the first part, Isaac Taylor, of the city and county of Racine, in the State of Wisconsin, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quitclaimed, and by these presents do remise, release, convey, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following-described lot, piece, or parcel of land, situated in said city of Racine, known as lot number twelve (12), in block number eighteen (18), according to the original plat of Racine, made by Moses Vilas, surveyor, and recorded in the office of the register of deeds for said county of Racine:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise
536 appertaining, and all the estate, right, title, interest, and claim whatever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part ha' hereunto set their hands and seals the day and year first above written.

D. P. RHODES. [SEAL.]
SOPHIA L. RHODES. [SEAL.]

Signed, sealed, and delivered in the presence of—
LOUIS BUCHOLTZ.
M. STUART.

STATE OF OHIO,
County of Portage, ss:

On this 28th day of July, A. D. 1862, came personally before the subscriber, a notary public in said county, Daniel P. Rhodes and Sophia L. Rhodes, to me well known to be the person' described in and who executed the above conveyance, and acknowledged that they had executed the same for the purposes therein set forth.

[SEAL.] M. STUART,
Notary Public.

Rec'd for record Aug. 1st, 1862, at 10 o'clock a. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from D. P. Rhodes to Isaac Taylor is a true and perfect copy of
537 the original of record in my office, as recorded in volume 43 of deeds, on page 60; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Def'ts' Exhibit No. 5.—Deed from Racine County to D. P. Rhodes.

Racine County to Daniel P. Rhodes.

To all whom these presents shall come, greeting:

Whereas Daniel P. Rhodes, assignee of Thomas H. Barnard, has deposited in the office of the clerk of the county board of supervisors of the county of Racine, in the State of Wisconsin, a certificate of the county treasurer of said county of Racine, whereby it appears (as the fact is) that the following pieces or parcels of land, lying and being situated in the city of Racine, in the county of Racine aforesaid, to wit, lot number twelve (12), in block number eighteen (18), in the first ward of said city, was for the non-payment of taxes sold by said county treasurer at public auction, at the office of said county treasurer,
538 in the court house, in said city of Racine, on the eighth day of April, in the year of our Lord one thousand eight hundred and fifty-six, to the said Thomas H. Barnard, for the sum of thirty-one dollars and twenty-nine cents in the whole, which sum was the amount assessed and due and unpaid on said lot or piece of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser, Thomas H. Barnard; and whereas it further appears (as the fact is) that the owner or claimant of said lot or tract of land had not redeemed from said sale the land which was sold as aforesaid, and said land is now unredeemed from such sale, whereby said described land has become forfeited, and the said purchaser, his heirs or assigns, entitled to a conveyance thereof:

Now, therefore, know all men by these presents that the county of Racine, in said State of Wisconsin, and the State of Wisconsin, in consideration of the said sum of money aforesaid, and the premises, and

in conformity to law, hath and hereby doth give, grant, and convey the lot, piece, or tract of land above described, together with the hereditaments and appurtenances, to the said Daniel P. Rhodes and to his
539 heirs and assigns, to his and their sole use and benefit, forever.

In testimony whereof I, Samuel Ritchie, the clerk of the county board of supervisors of the county of Racine, have executed this deed, pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin, and for and on behalf of said State and of the county of Racine aforesaid, have hereunto subscribed my name officially, and affixed the seal of the said county board of supervisors (which is by law made the corporate seal of said county) at my office, in the court-house in said city of Racine, this fifteenth day of November, A. D. 1859.

SAMUEL RITCHIE, [L. S.]
Clerk of the County Board of Supervisors of Racine County, Wisconsin.

Done, executed, and delivered in presence of—
RICHARD E. ELA.
JESSE B. SHAW.

STATE OF WISCONSIN,
County of Racine, ss:

I, Albert G. Knight, a notary public of the State of Wisconsin, and residing in the county of Racine aforesaid, do certify that on this fifteenth day of November, A. D. 1859, Samuel Ritchie, known to me to be the clerk of the board of supervisors of said county of Racine, and who is well known to me to be the person who executed the foregoing deed, came personally before me and acknowledged the due execution of the same.

540 In witness whereof I have hereunto set my hand and seal notarial the day and year last above written.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

Rec'd for record Nov. 15th, A. D. 1859, at 2¾ o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Racine County to Daniel P. Rhodes is a true and perfect copy of the original of record in my office, as recorded in volume 40 of deeds, on page 243; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this thirtieth day of December, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

Def'ts' Exhibit No. 6.

Deed from Racine City to Isaac Taylor.

To all to whom these presents shall come, greeting:

Whereas Isaac Taylor, assignee T. H. Barnard, has deposited in the

office of the city treasurer, of *city* the city of Racine, in the county of Racine, in the State of Wisconsin, a certificate of the city treas-
541 urer of said city of Racine, whereby it appears (as the fact is) that the following-described piece, tract, or parcel of land, lying and being situated in the city of Racine, in the county of Racine aforesaid, to wit, lot number twelve (12), in block number eighteen (18), in the first ward of said city, was for the non-payment of taxes sold by the city treasurer of said city, at public auction, at the office of the said city treasurer, in the city of Racine aforesaid, on the second day of February, in the year of our Lord one thousand eight hundred and fifty-six, to T. H. Barnard, of whom the said Isaac Taylor is assignee, for the sum of fifty-four dollars and thirty-one cents in the whole, which sum was the amount of taxes assessed and due and unpaid on said tract of land, together with the costs and charges of such sale, due therewith at the time of making such sale, which said sum of money has been paid by the aforesaid purchaser; and whereas it further appears (as the fact is) that the owner or owners, claimant or claimants, of said lands have not redeemed from said sale the lands above described, nor any part of the same which was sold as aforesaid, and said land is now unredeemed from such sale, whereby said described land has become forfeited, and the said purchaser, his heirs or assigns, are entitled to a conveyance thereof:

542 Now, therefore, know all men by the presents, that the city of Racine, in the county of Racine & State of Wisconsin, and the State of Wisconsin, in consideration of the said sum of money aforesaid, and the premises, and in conformity to law, hath, and hereby doth give, grant, and convey the tract of land above described, together with the hereditaments and appurtenances, to the said Isaac Taylor and to his heirs and assigns, to their sole use and benefit, forever.

In testimony whereof I, Michael Field, the city treasurer of said city of Racine, in the county of Racine and State of Wisconsin, have executed this deed, pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin, and for and in behalf of said State and of the city of Racine aforesaid, have hereunto subscribed my name officially and affixed the corporate seal of said city of Racine, this fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] MICHAEL FIELD,
City Treasurer of Racine.

Done in presence of—
NORTON J. FIELD.
ALBERT G. KNIGHT.

STATE OF WISCONSIN,
County of Racine, ss:

I, Albert G. Knight, a notary public of the State of Wisconsin, and residing in said county of Racine, do certify that on the
543 fifteenth day of November, A. D. 1859, Michael Field, known to me to be the treasurer of the city of Racine, in said county of Racine, and who is well known to me be the person who executed the foregoing deed, came personally before me and acknowledged the due execution of the same.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

Rec'd for record Nov. 15th, A. D. 1859, at 3½ o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Racine City to Isaac Taylor is a true and perfect copy of the original of record in my office, as recorded in volume 40 of deeds, on pages 240 & 241; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine Count

544 *Def'ts' Exhibit No. 7.*

Deed from city of Racine to I. Taylor.

To all to whom these presents shall come, greeting:

Whereas Isaac Taylor, assignee of T. H. Kidder, has deposited in the office of the city treasurer of the city of Racine, in the county of Racine, in the State of Wisconsin, a certificate of the city treasurer of said city of Racine, whereby it appears (as the fact is) that the following-described piece, tract, or parcel of land lying and being situated in the city of Racine, in the county of Racine aforesaid, to wit, lot number twelve (12), in block number eighteen (18), in the first ward of said city, was, for the non-payment of taxes, sold by the city treasurer of said city at public auction, at the office of the said city treasurer, in the city of Racine aforesaid, on the eleventh day of February, in the year of our Lord one thousand eight hundred and fifty-seven, to T. H. Kidder, of whom the said Isaac Taylor is assignee, for the sum of fifty dollars and eighty-six cents, in the whole, which sum was the amount of taxes assessed and due and unpaid on said tract of land, together with the costs and charges of such sale due therewith at the time of making such sale, which said sum of money has been paid by the aforesaid purchaser; and whereas it further appears (as the fact is) that the owner or owners, claimant or claimants of said land have not redeemed from said sale the land above described, or any part of the same, which was sold as aforesaid, and said land is now unredeemed from such sale,
545 whereby said-described land has become forfeited, and the said purchaser, his heirs or assigns, are entitled to a conveyance thereof:

Now, therefore, know all men by these presents, that the city of Racine, in the county of Racine and State of Wisconsin, and the State of Wisconsin, in consideration of the said sum of money aforesaid and the premises, and in conformity to law, hath and hereby doth give, grant, and convey the tract of land above described, together with the hereditaments and appurtenances, to the said Isaac Taylor and to his heirs and assigns, to their sole use and benefit forever.

In testimony whereof, I, Michael Field, the city treasurer of said city of Racine, in the county of Racine and State of Wisconsin, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin, and for and in behalf of said State and of the city of Racine aforesaid have hereunto subscribed my name officially and affixed the corporate seal of said

city of Racine, at my office in said city of Racine, this fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] MICHAEL FIELD,
City Treasurer of Racine.

Done in presence of—
NORTON J. FIELD.
ALBERT G. KNIGHT.

STATE OF WISCONSIN,
546 *County of Racine, ss:*

I, Albert G. Knight, a notary public of the State of Wisconsin, residing in said county of Racine, do certify that on the fifteenth day of November, A. D. 1859, Michael Field, known to me to be the treasurer of the city of Racine, in said county of Racine, and who is well known to me to be the person who executed the foregoing deed, came personally before me and acknowledged the due execution of the same.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

Rec'd for record Nov. 15th, A. D. 1859, at 3½ o'clock p. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Racine City to Isaac Taylor is a true and perfect copy of the original of record in my office, as recorded in volume forty of deeds, on pages 241 & 242; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this thirtieth day of January, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

547 *Defendants' Exhibit Number* 8.

Judgment-roll in foreclosure case of Isaac Taylor vs. Eugene Howland et al.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF, *against* EUGENE HOWLAND, PHINEAS HARDY, DAVID H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millet, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.	Summons for relief.

The State of Wisconsin to the above-named defendants:

You are hereby summoned and required to answer the complaint in

this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at there office in the city and county of Racine, within ninety days after the service hereof, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid the said plaintiff will apply to the court for the relief demanded in the complaint.

548 Said complaint is on file in the office of the clerk of said court, at the city of Racine, in said county.

Witness the Hon. David Noggel, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 10 day of Aug., A. D. 1861.

[L. S.] JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Plaintiff's Attorneys.

Filed Aug. 10, 1861.

JACOB S. CRANE,
Clerk.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, DAVID H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millet, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

549 The above-named plaintiff respectfully shows to this court and alleges that on or about the 21st day of October, A. D. 1857, the defendant Eugene Howland, by his agent and attorney, Richmond W. Howland, executed under his hand and seal and delivered to the said plaintiff a bond, bearing date on that day, in the penal sum of fourteen thousand dollars, with a condition thereunder written, in substance, that if the obligor in the said bond named, his executors or administrators, should pay, or cause to be paid, to the obligee therein named, his executors, administrators, or assigns, the sum of seven thousand dollars, on the first day of January, 1860, and pay interest on the same, semi-annually from date thereof, at the rate of ten per cent. per annum, and keep the building which the said Eugene Howland was at the date of said bond erecting on lot twelve, in block eighteen, in the first ward of the city of Racine, insured for the sum of seven thousand dollars in responsible insurance companies and the policies of such insurance assigned to said Taylor from the time such building should be completed until said sum and interest thereon should be fully paid, and pay all taxes and assessments on said lot twelve, and also on lot four (4) in the same block, before the expiration of sixty days after said lots, or either of them, shall have been sold for the non-payment of such taxes or assessments,

550 that said insurance should be subject to the approval of said Tay-

lor, and in case such insurance should not at any time be effected and the policies assigned as above provided, then the said Taylor, or his assigns, might cause said building to be insured in his own name for the same amount, and that the amount paid for such insurance should be added to and become a part of the moneys secured to be paid by said bond, and should be due and collectable, with the interest, at the rate of twelve per cent. per annum, at the next semi-annual payment of interest on said bond; and further conditioned, that in case any of the interest-money secured to be paid thereby should remain unpaid for ten days after due, then the principal sum thereby secured should bear and draw interest thereafter at the rate of twelve per cent. per annum, payable semi-annually on the days above stated; that said Eugene Howland might make payments of not less than one thousand dollars each at any time upon giving said Taylor sixty days' notice in writing thereof; that said Eugene Howland might extend the time of payment of two-thirds the amount of said principal sum, one-third to the first day of January, 1861, and the other third to the first day of January, 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-annually, upon his giving said Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend;
551 and in case there should be such an extension all the terms and conditions of said bond should be applicable to the extended loan; that in case said Eugene Howland should fail to pay any installment of interest or any money paid for insurance for sixty days after the same should become due, or any taxes or assessments as above agreed to be paid, then that said principal sum with the unpaid interest thereon should become immediately due and collectable; and further conditioned that if said Eugene Howland should well and truly perform and fulfill each and all of the above-recited agreements, then the said bond to be void, otherwise to be and remain in force, as by the said bond, ready to be produced by the said plaintiff as this court shall direct, will fully appear. And the said Eugene Howland, by his said attorney, Richmond W. Howland, to secure the payment of the principal and interest mentioned in said bond, and the keeping and fulfillment of the conditions of said bond, did at the same time execute under his hand and seal and deliver to the said plaintiff a mortgage bearing even date with said bond, and conditioned for the payment of the sum and interest mentioned in said bond and the keeping and fulfillment of all the conditions thereof, as hereinbefore stated, and further conditioned to pay all taxes and assessments which should be assessed on said mortgaged prem-
552 ises previous to the payment of the said sum of money and interest thereon, and also to pay all reasonable expenses which the said plaintiff might incur in collecting said bond or in foreclosing said mortgage for the services of attorney or counsel, or otherwise, by which mortgage the said Eugene Howland mortgaged unto the said plaintiff in fee the following-described lands and real estate: All those two certain pieces or parcels of land situate in the first ward of said city of Racine, known and described as lots number four (4) and twelve (12), in block number eighteen, as the same are marked on the original plot of the village of Racine, made by Moses Vilas, surveyor, and now on record in office of register of deeds in and for said county of Racine, which said mortgage was duly attested by two subscribing witnesses, was duly acknowledged, and afterward was duly recorded in the office of register of deeds in and for the county of Racine, in said State of Wisconsin, on the 5th day of November, A. D. 1857, at 3¼ o'clock in the afternoon of that day, in volume Y of mortgages, on pages 141, 142, and 143.

The said plaintiff further shows unto this court and alleges that by deed bearing date the 24th day of January, A. D. 1860, this plaintiff released from the lien of said mortgage said lot number four therein mentioned and accepted the remainder of said mortgaged premises as
553 his security; and the plaintiff further shows that said defendant Eugene Howland has failed to comply with the conditions of said bond and mortgage, by omitting and neglecting to pay the full amount of principal and interest which became due and payable thereon on the first day of January, A. D. 1860.

The plaintiff further shows unto this court and alleges that there are now liens upon said mortgaged premises for taxes and assessments which the said Eugene Howland neglected to pay.

The plaintiff further shows unto this court, upon information and belief, that said defendants, Phineas Hardy, David H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester have, or claim to have, some interest in or lien upon the said mortgaged premises, or some part thereof, which said interest or lien, if any, is subsequent to and subject to the mortgage of the plaintiff, and no personal claim is made against any of said defendants, except Eugene Howland; that no proceedings have been had at law or otherwise for the recovery of the sum secured by said bond and mortgage, or any part thereof, and that there is now actually due thereon from said Eugene Howland to this plaintiff about the sum of seven
554 thousand dollars. The plaintiff therefore demands judgment, that the above-named defendants and all persons claiming under them or either of them, subsequent to the commencement of this action, may be forever barred and foreclosed of all right, claim, lien, and equity of redemption in the said mortgaged premises; that the said mortgaged premises, except said lot number four, may be adjudged to be sold, and the plaintiff paid the amount due on said bond and mortgage, the amount of his reasonable expenses and disbursements in this action for attorney & counsel fee, or otherwise, in foreclosing said mortgage, over and above taxable costs in this action; the amount by him paid for taxes and assessments on said mortgaged premises, with interest on said several sums to the time of such payment, and the costs and disbursements of this action, so far as the amount of the moneys arising from such sale, properly applicable thereto, will pay the same; that the liens on said mortgaged premises for taxes and assessments may be paid and canceled out of the said moneys arising on said sale, and that the defendant, Eugene Howland, may be adjudged to pay any deficiency that may remain after applying all of said moneys applicable thereto, as aforesaid; and that the plaintiff may have such other or further relief, or both, in the premises as shall be just and equitable.

STRONG & FULLER,
Pl'ff's Att'ys.

555 STATE OF WISCONSIN,
County of Racine, ss:

Henry T. Fuller, being duly sworn, says that he is one of the attorneys for the plaintiff named in the above complaint; that said complaint is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true; that the reason said complaint is not verified by said plaintiff

is that the said plaintiff is absent from home on a journey. and, as this deponent verily believes, is not now within the county of Racine; that this deponent derives his knowledge from being one of the attorneys for the said plaintiff, and from the bond and mortgage mentioned and set forth in said complaint, which bond and mortgage are now in the possession of Strong & Fuller, plaintiff's attorneys in this action.

And further deponent says not.

HENRY T. FULLER.

Subscribed and sworn to this 10th day of August, A. D. 1861, before me.

WARREN J. DURHAM,
Notary Public.

Filed August 10th, 1861.

JACOB S. CRANE, *Clerk.*

556 Circuit court for Racine County.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, DAVID H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

STATE OF WISCONSIN,
Racine County, ss:

Warren J. Durham, being duly sworn, says that the signatures, John B. Adams, Ira C. Paine, E. Jamieson, j'r, John Tapley, Adam C. Sandford, A. O. Burch, W'm P. Lyon, D. McDonald, C. W. Bennett, Richard Smythe, and A. W. Farr to the admission of service endorsed on the within summons are the genuine signatures of each of the defendants, John B. Adams, Ira C. Paine, E. Jamieson, j'r, John Tapley, Adam C. Sandford, Alexander O. Burch, W'm P. Lyon, D. McDonald, Charles W. Bennett, Richard Smythe, and Asa W. Farr, respectively, writ-
557 ten in this deponent's presence, and that this deponent saw each of said defendants, respectively, write the same, and further deponent says not.

WARREN J. DURHAM.

Subscribed and sworn to this 7th day of September, A. D. 1861, before me.

F. W. BRUCE,
Notary Public.

Filed Sept. 7th, 1861.

JACOB S. CRANE, *Clerk.*

STATE OF WISCONSIN.

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, DAVID H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants. } Summons for relief.

The State of Wisconsin to the above-named defendants:

558 You are hereby summoned and required to answer the complaint in this action, of which a copyis herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office in the city & county of Racine, within ninety days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the said plaintiff will apply to the court for the relief demanded in the complaint. Said complaint is on file in the office of the clerk of said court, at the city of Racine, in said county.

Witness the Hon. David Noggle, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 10th day of August, A. D. 1861.

[L. S.] JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Pl'ff's Att'ys.

I hereby admit due service of the within summons, and of the complaint hereto annexed, this 13th day of August, A. D. 1861.

JOHN B. ADAMS.
IRA C. PAINE.
E. JAMIESON, J'R.
JOHN TAPLEY.
ADAM C. SANDFORD.
A. O. BURCH.
W'M P. LYON.
D. McDONALD.
C. W. BENNETT.
RICHARD SMYTHE and
A. W. FARR.

559 RACINE COUNTY, *ss:*

I hereby certify that on this 21st day of August, A. D. 1861, I personally served the within summons on the within-named defendants, George Q. Erskine, Thomas C. Jenks, and C. Fred. Bliss, by delivering to and leaving with each a true copy thereof.

And I further certify that, after making diligent search and inquiry, I am unable to find the within-named defendants, Eugene Howland,

Phineas Hardy, David H. Johnson, or Elias Manchester within my county.

My fees, $3.00.

H. T. TAYLOR, *Sheriff.*

Filed Sept. 7th, 1861.

JACOB S. CRANE, *Clerk.*

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, DAVID H. JOHNSON, GEORGE Q. ERSKINE, THOMAS C. JENKS, WILLIAM P. LYON, JOHN B. ADAMS, DAVID McDONALD, RICHARD SMYTHE, CHARLES JONES, IRA C. PAINE, NELSON MILLETT, ADAM C. SANDFORD, JOHN TAPLEY, C. FRED. BLISS, ALEXANDER O. BURCH, ASA W. FARR, CHARLES W. BENNETT, EGBERT JAMIESON, j'r, and ELIAS MANCHESTER, defendants.

560 The above-named plaintiff respectfully shows to this court and alleges that, on or about the 21st day of October, A. D. 1867, the defendant, Eugene Howland, by his agent and attorney, Richmond W. Howland, executed under his hand and seal, and delivered to the said plaintiff, a bond, bearing date on that day, in the penal sum of fourteen thousand dollars, with a condition thereunder written in substance that if the obligor in the said bond named, his executors or administrators, should pay or cause to be paid to the obligee therein named, his executors, administrators, or assigns, the sum of seven thousand dollars, on the first day of January, 1860, and pay interest on the same semi-annually from date thereof at the rate of ten per cent. per annum, and keep the building which the said Eugene Howland was at the date of said bond erecting on lot twelve, in block eighteen, in the first ward of the city of Racine, insured for the sum of seven thousand dollars in responsible insurance companies, and the policies of such insurance assigned to said Taylor, from the time such building should be completed until said sum and interest thereon should be fully paid, and pay all taxes and assessments on said lot twelve, and also on lot four (4), in the same block, before the expiration of sixty days after said lots, or either of them, shall have been sold for the non-payment of such taxes or assessments, that said insurance should be subject to the approval of said Taylor, and in case such insurance should not at any time
561 be effected, and the policies assigned, as above provided, then the said Taylor, or his assigns, might cause said building to be insured in his own name, for the same amount, and that the amount paid for such insurance should be added to and become a part of the moneys secured to be paid by said bond, and should be due and collectable with the interest, at the rate of twelve per cent. per annum, at the next semi-annual payment of interest on said bond; and further conditioned, that in case any of the interest-money secured to be paid thereby should remain unpaid for ten days after due, then the principal sum thereby secured should bear and draw interest thereafter at the rate of twelve per cent. per annum, payable semi-annually on the days

above stated; that said Eugene Howland might make payments of not less than one thousand dollars each at any time, upon giving said Taylor sixty days' notice in writing thereof; that said Eugene Howland might extend the time of payment of two-thirds the amount of said principal sum, one-third to the 1st day of January, 1861, & the other third to the 1st day of January, 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-annually, upon his giving said
562 Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend, and in case there should be such an extension all the terms and conditions of said bond should be applicable to the extended loan; that in case said Eugene Howland should fail to pay any instalment of interest, or any money paid for insurance, for sixty days after the same should become due, or any taxes or assessments as above agreed to be paid, then that said principal sum, with the unpaid interest thereon, should become immediately due and collectable; and further conditioned that, if said Eugene Howland should well and truly perform and fulfil each and all of the above-recited agreements, then the said bond to be void, otherwise to be and remain in force, as by the said bond, ready to be produced by the said plaintiff as this court shall direct, will fully appear. And the said Eugene Howland, by his said attorney, Richmond W. Howland, to secure the payment of the principal and interest mentioned in said bond, and the keeping and fulfillment of the conditions of said bond, did at the same time execute, under his hand and seal, and deliver to the said plaintiff, a mortgage, bearing even date with said bond, and conditioned for the payment of the sum and interest mentioned in said bond, and the keeping and fulfillment of all the conditions thereof as
563 hereinbefore stated; and further conditioned to pay all taxes and assessments which should be assessed on said mortgaged premises previous to the payment of the said sum of money and interest thereon, and also to pay all reasonable expenses which the said plaintiff might incur in collecting said bond, or in foreclosing said mortgage, for the services of attorney or counsel, or otherwise, by which mortgage the said Eugene Howland mortgaged unto the said plaintiff, in fee, the following-described lands and real estate: All those two certain pieces or parcels of land situate in the first ward of said city of Racine, known and described as lots number four (4) and twelve (12), in block number eighteen, as the same are marked on the original plat of the village of Racine made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine; which said mortgage was duly attested by two subscribing witnesses, was duly acknowledged, and afterwards was duly recorded in the office of register of deeds in and for the county of Racine, in said State of Wisconsin, on the 5th day of November, A. D. 1857, at 3¼ o'clock in the afternoon of that day, in volume Y of mortgages, on pages 141, 142, and 143.

The said plaintiff further shows unto this court and alleges
564 that by deed, bearing date the 24th day of January, A. D. 1860, this plaintiff released from the lien of said mortgage said lot number four therein mentioned, and accepted the remainder of said mortgaged premises as his security.

And the plaintiff further shows that said defendant, Eugene Howland, has failed to comply with the conditions of said bond and mortgage, by omitting and neglecting to pay the full amount of principal and interest which became due and payable thereon on the first day of January, A. D. 1860.

The plaintiff further shows unto this court and alleges that there are now liens upon said mortgaged premises for taxes and assessments, which the said Eugene Howland neglected to pay.

The plaintiff further shows unto this court, upon information and belief, that said defendants, Phineas Hardy, David H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jami'son, j'r, and Elias Manchester have or claim to have some interest in, or lien upon, the said mortgaged premises, or some part thereof, which said interest or lien, if any, is subsequent to and subject to the mortgage of the plaintiff, and no personal claim is made against any of said defendants except Eugene Howland; that no proceedings have been had at law or other-
565 wise for the recovery of the sum secured by said bond and mortgage, or any part thereof, and that there is now actually due thereon from said Eugene Howland to this plaintiff about the sum of seven thousand dollars.

The plaintiff therefore demands judgment that the above-named defendants and all persons claiming under them, or either of them, subsequent to the commencement of this action, may be forever barred and foreclosed of all right, claim, lien, and equity of redemption in the said mortgaged premises; that the said mortgaged premises, except the said lot number four, may be adjudged to be sold, and the plaintiff paid the amount due on said bond and mortgage; the amount of his reasonable expenses and disbursements in this action for attorney and counsel fee, or otherwise, in foreclosing said mortgage, over and above taxable costs in this action; the amount by him paid for taxes and assessments on said mortgaged premises, with interest on said several sums to the time of such payment, and the costs and disbursements of this action, so far as the amount of the moneys arising from such sale, properly applicable thereto, will pay the same; that the liens on said mortgaged premises for taxes and assessments may be paid and cancelled out of the said moneys arising on said sale, and that the defendant Eugene
566 Howland may be adjudged to pay any deficiency that may remain after applying all of said moneys applicable thereto as aforesaid, and that the plaintiff may have such other or further relief, or both, in the premises as shall be just and equitable.

STRONG & FULLER,
Plaintiff's Attorneys.

STATE OF WISCONSIN,
County of Racine, ss:

Henry T. Fuller, being duly sworn, says that he is one of the attorneys for the plaintiff named in the above complaint; that said complaint is true; of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true; that the reason said complaint is not verified by said plaintiff is, that said plaintiff is absent from home on a journey, and, as this deponent verily believes, is not now within the county of Racine; that this deponent derives his knowledge from being one of the attorneys for said plaintiff, and from the bond and mortgage mentioned and set forth in said complaint, which bond and mortgage are now in possession of Strong & Fuller, plaintiff's attorneys in this action; and further deponent says not.

HENRY T. FULLER.

Subscribed and sworn to this 10th day of August, A. D. 1861, before me.

WARREN J. DURHAM.
Not'y Public.

Filed Sept. 7th, 1861.

JACOB S. CRANE, *Clerk.*

567 STATE OF WISCONSIN.

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

Summons for relief.

The State of Wisconsin to the above-named defendants:

You are hereby summoned and required to answer the amended complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint upon the subscribers, at their office in the city and county of Racine, within ninety days after the service hereof, exclusive of the day of such service;
568 and if you fail to answer the said amended complaint within the time aforesaid the said plaintiff will apply to the court for the relief demanded in the amended complaint; said complaint is on file in the office of the clerk of said court, at the city of Racine, in said county.

Witness the hon. David Noggle, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 5th day of September, A. D. 1861.

[L. S.]

JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Plaintiff's Attorneys.

I hereby admit due service of the within summons, and of the complaint hereto annexed, this 5th day of September, A. D. 1861.

IRA C. PAINE.
D. McDONALD.
A. C. SANDFORD.
JOHN B. ADAMS.
A. O. BURCH.
W'M P. LYON.
E. JAMIESON, J'R.
C. W. BENNETT.
RICHARD SMYTH.
JOHN W. ENGLISH,
Administrator of the estate of D. H. Johnson, deceased.
NELSON MILLETT.
JOHN TAPLEY.
A. W. FARR.
CHARLES JONES.

STATE OF WISCONSIN,
Racine County, ss:

Warren J. Durham, being duly sworn, says that the signatures, Ira C. Paine, D. McDonald, A. C. Sandford, John B. Adams, A. O. Burch, W'm P. Lyon, E. Jamieson, j'r, C. W. Bennett, Richard Smythe, Charles Jones, John W. English, administrator of the estate of D. H. Johnson, deceased, Nelson Millett, John Tapley, and A. Farr, to the above admission of service, are the genuine signatures of each of said defendants respectively; that said signatures were written by said defend-
569 ants in this deponent's presence, and that said deponent saw each of said defendants, respectively, sign his name thereto; and further says not.

WARREN J. DURHAM.

Subscribed and sworn to this 5th day of October, A. D. 1861, before me.

F. W. BRUCE,
Notary Public.

STATE OF WISCONSIN.

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lynde, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

The above-named plaintiff respectfully shows to this court and alleges in this his amended complaint that on or about the twenty-first day of October, A. D. 1857, the defendant Eugene Howland, by his agent and attorney, Richmond W. Howland, executed under his hand and seal and delivered to the said plaintiff a bond, bearing date on that day, in the penal sum of fourteen thousand dollars, with a condition
570 thereunder written, in substance, that if the obligor in the said bond named, his executors or administrators, should pay or cause to be paid to the obligee named therein, his executors, administrators, or assigns, the sum of seven thousand dollars on the first day of January, 1860, and pay interest on the same semi-annually from date thereof at the rate of ten per cent. per annum, and keep the building which the said Eugene Howland was at the date of said bond erecting on lot twelve, in block eighteen, in the first ward of the city of Racine, insured for the sum of seven thousand dollars in responsible insurance companies, and the policies of such insurance assigned to said Taylor from the time such building should be completed until said sum and interest thereon should be fully paid, and pay all taxes and assessments on said lot twelve and also on lot four (4) in the same block before the expiration of sixty days after said lots or either of them should have been sold for the non-payment of such taxes or assessments; that said insurance should be subject to the approval of said Taylor, and in case such in-

surance should not at any time be effected and the policies assigned as above provided, then the said Taylor, or his assigns, might cause said building to be insured in his own name for the same amount,
571 and that the amount paid for such insurance should be added to and become a part of the moneys secured to be paid by said bond, and should be due and collectable, with the interest, at the rate of twelve per cent. per annum, at the next semi-annual payment of interest on said bond; and further conditioned, that in case any of the interest-money secured to be paid thereby should remain unpaid for ten days after due, then the principal sum thereby secured should bear and draw interest thereafter at the rate of twelve per cent. per annum, payable semi-annually on the days above stated. That said Eugene Howland might make payments, of not less than one thousand dollars each, at any time, upon giving said Taylor sixty days' notice in writing thereof; that said Eugene Howland might extend the time of payment of two-thirds of the amount of said principal sum, one-third to the first day of January, A. D. 1861, and the other third to the first day of January, 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-annually, upon his giving said Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend, and in case there should be such an extension, all the terms and conditions of said bond should be applicable to the extended loan.
572 That in case said Eugene Howland should fail to pay any instalment of interest or any money paid for insurance for sixty days after the same should become due, or any taxes or assessments as above agreed to be paid, should become immediately due and collectable. And further conditioned that if said Eugene Howland should well and truly perform and fulfill each and all of the above-recited agreements, then the said bond to be void, otherwise to be and remain in force, as by the said bond, ready to be produced by the said plaintiff as this court shall direct, will fully appear. And the said Eugene Howland, by his said attorney, Richmond W. Howland, to secure the payment of the principal and interest mentioned in said bond, and the keeping and fulfillment of the conditions of said bond, did at the same time execute under his hand and seal and deliver to the said plaintiff a mortgage bearing even date with said bond, and conditioned for the payment of the sum and interest mentioned in said bond, and the keeping and fulfillment of all the conditions thereof as hereinbefore stated; and further conditioned to pay all taxes and assessments which should be assessed on said mortgaged premises previous to the payment of the said sum of money and interest thereon, and also to pay all reasonable expenses which the said plaintiff might incur in collecting said bond or in foreclosing said
573 mortgage, for the services of attorney or counsel or otherwise, by which mortgage the said Eugene Howland mortgaged unto the said plaintiff, in fee, the following-described lands and real estate. All those two certain pieces or parcels of land situate in the first ward of said city of Racine, known and described as lots number four (4) and twelve, in block number eighteen, as the same are marked on the original plot of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine, which said mortgage was duly attested by two subscribing witnesses, was duly acknowledged, and afterwards was duly recorded in the office of the register of deeds in and for the county of Racine, in said State of Wisconsin, on the 5th day of November, A. D. 1857, at 3¼ o'clock in the afternoon of that day, in volume Y of mortgages, on pages 141, 142, and 143.

The said plaintiff further shows unto this court, and alleges that by deed bearing date the 24th day of January, A. D. 1860, this plaintiff released from the lien of said mortgage said lot number 4 therein mentioned, and accepted the remainder of said mortgaged premises as his security.

And the plaintiff further shows that defendant, Eugene Howland, has failed to comply with the conditions of said loan and mortgage, by
574 omitting and neglecting to pay the full amount of principal and interest which became due and payable thereon on the 1st day of January, A. D. 1860.

The plaintiff further shows unto this court and alleges that there are now liens upon said mortgaged premises for taxes and assessments which the said Eugene Howland neglected to pay.

The plaintiff further shows unto this court, upon information and belief, that said defendants, Phineas Hardy, John W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamison, j'r, and Elias Manchester, have, or claim to have, some interest in or lien upon the said mortgaged premises or some part thereof, which said interest or lien, if any, is subsequent to and subject to the mortgage of the plaintiff, and no personal claim is made against any of said defendants, except Eugene Howland. That no proceedings have been had at law or otherwise for the recovery of the sum secured by said bond and mortgage, or any part thereof, and that there is now actually due thereon from said Eugene Howland to this plaintiff about the sum of seven thousand dollars.

575 The plaintiff therefore demands judgement that the above-named defendants, and all persons claiming under them or either of them subsequent to the commencement of this action, may be forever barred and foreclosed of all right, claim, lien, and equity of redemption in the said mortgaged premises; that the said mortgaged premises, except said lot number four, may be adjudged to be sold, and the plaintiff paid the amount due on said bond and mortgage, the amount of his reasonable expenses and disbursements in this action, for attorney and counsel fees or otherwise in foreclosing said mortgage, over and above taxable costs in this action, the amount paid by him for taxes and assessments on said mortgaged premises, with interest on said several sums to the time of such payment, and the costs and disbursements of this action, so far as the amount of the moneys arising from such sale, properly applicable thereto, will pay the same; that the liens on said mortgaged premises for taxes and assessments may be paid and canceled out of the said moneys arising on said sale, and that the defendant, Eugene Howland, may be adjudged to pay any deficiency that may remain after applying all of said moneys applicable thereto as aforesaid, and that the plaintiff may have such other or further relief, or both, in the premises as shall be just and equitable.

STRONG & FULLER,
P'ff's Att'ys.

576 STATE OF WISCONSIN,
County of Racine, ss:

Henry T. Fuller, being duly sworn, says that he is one of the attorneys for the plaintiff named in the above amended complaint, that said complaint is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true. That the reason said complaint is not verified by

said plaintiff is that said plaintiff is absent from home on a journey, and is, this deponent verily believes, *is* not now within the county of Racine. That this deponent derives his knowledge from being one of the attorneys for said plaintiff, and from the bond and mortgage mentioned and set forth in said complaint, which bond and mortgage are now in possession of Strong & Fuller, plaintiff's attorneys in this action.

And further deponent says not.

HENRY T. FULLER.

Subscribed and sworn to this 4th day of September, A. D. 1861, before me.

WARREN J. DURHAM,
Notary Public.

Filed Feb. 26th, 1862.

J. S. CRANE, *Clerk.*

577 Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, DAVID H. Johnson, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

Notice of object of action, where complaint is not served in mortgage cases.

To all the above-named defendants, except Eugene Howland:

The object of the above action, in which a summons is herewith served upon you, is to foreclose a mortgage executed by Eugene Howland, of the State of California, to Isaac Taylor, of the county of Racine, in the State of Wisconsin, on the 21st day of October, A. D. 1857, for the sum of seven thousand dollars, with interest from said last-mentioned date, at the rate of ten per cent. per annum, if paid when due, and if not so paid at the rate of twelve per cent. after due, upon the following-described premises: All those two certain pieces or parcels of
578 land situate in the first ward of the said city of Racine, known and described as lots four (4) and twelve (12) in block number eighteen (18), as the same are marked upon the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine (said plaintiff afterwards released said lot number four from the lien of said mortgage), and no personal claim is made against you.

Yours, &c.,

STRONG & FULLER,
Plaintiff's Attorneys.

Dated Racine, August 10th, 1861.

RACINE COUNTY, *ss:*

I hereby certify that on this 21st day of August, A. D. 1861, I personally served the within notice of object of action on the within-named defendants, George Q. Erskine & Thomas C. Jenks & C. Fred. Bliss, by delivering to and and leaving with each a true copy thereof.

My fees, $3.00.

H. T. TAYLOR, *Sheriff.*

579 STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss. Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.
} Summons for relief.

The State of Wisconsin to the above-named defendants:

You are hereby summoned and required to answer the amended complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office in the city and county of Racine within ninety days after the service hereof, exclusive of the day of such service, and if you fail to answer the said amended complaint within the time aforesaid, the said plaintiff will apply to the court for the relief demanded in the amended complaint. Said complaint is on file in the office of
580 the clerk of said court, at the city of Racine, in said county.

Witness the Hon. David Noggle, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 5th day of September, A. D. 1861.

[L. S.] JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Plaintiff's Attorneys.

RACINE COUNTY, *ss:*

I hereby certify that on this 9th day of September, 1861, I personally served the within amended summons on the within-named defendants George Q. Erskine, C. Fred. Bliss, and Thomas C. Jenks, and delivered to each a true copy thereof.

H. T. TAYLOR, *Sheriff.*

My fees, $3.00.

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, & Elias Manchester, defendants.
} Notice of object of action, where complaint is not served in mortgage cases.

581 To all the above-named defendants, except Eugene Howland:

The object of the above action, in which a summons is here

with served upon you, is to foreclose a mortgage executed by Eugene Howland, of the State of California, to Isaac Taylor, of the county of Racine, in the State of Wisconsin, on the 21st day of October, A. D. 1857, for the sum of seven thousand dollars, with interest from said last-mentioned date, at the rate of ten per cent. per annum, if paid when due, if not so paid, at the rate of twelve per cent. after due, upon the following described premises: All those two certain pieces or parcels of land situate in the first ward of said city of Racine, known and described as lots number four (4) and twelve (12), in block number eighteen, as the same are marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine (said plaintiff afterwards released said lot number four (4) from the lien of said mortgage), and no personal claim is made against you.

Yours, &c.,

STRONG & FULLER,
Plaintiff's Attorneys.

Dated Racine, September 5th, 1861.

582 RACINE COUNTY, *ss:*

I hereby certify that on this 9th day of September, A. D. 1861, I personally served the within amended notice of object of action on the within-named defendants George Q. Erskine, C. Fred. Bliss, and Thomas C. Jenks, by delivering to and leaving with each a true copy thereof.

H. T. TAYLOR, *Sheriff.*

My fees, $3.00.

Filed Feb'y 26th, 1862.

J. S. CRANE, *Clerk.*

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, W'm P. Lyon, John B. Adams, David McDonald, Richard Smith, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

STATE OF WISCONSIN,
Racine County, ss:

Horatio T. Taylor, being duly sworn, says that he is the sheriff of said Racine County; that the summons in the above-entitled action, addressed to the above-named defendants, was delivered to this
583 deponent by Strong & Fuller, attorneys for the plaintiff, to be served on said defendants; that the above-named defendants, Eugene Howland, Elias Manchester, and Phineas Hardy, are non-residents of the State of Wisconsin; that this deponent has made diligent search and inquiry for said defendants last above named, and cannot

find them within this State; that this deponent has been informed, and verily believes the same to be true, that said defendant Eugene Howland resides at Don Pedro's Bar, in the county of Tolume and State of California, and that the defendant, Elias Manchester, resides at Levanna, in the county of Cayuga and State of New York, and that the defendant, Phineas Hardy, resides in the town of Le Roy, in the county of Jefferson, in the State of New York; and further this deponent says not.

H. T. TAYLOR.

Subscribed and sworn to before me this 7th day of September, A. D. 1861.

WARREN J. DURHAM,
Notary Public.

584 Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

STATE OF WISCONSIN,
County of Racine, ss:

Henry T. Fuller, being duly sworn, says that he is one of the attorneys for the plaintiff named in the above-entitled action; that said action was commenced for the foreclosure and satisfaction of a mortgage upon real property within the said county of Racine; that the above-named defendants, Eugene Howland, Elias Manchester, and Phineas Hardy, have an interest in said real property, and are proper parties defendant in the above suit; that said defendants cannot be found within the State of Wisconsin, after diligent search and inquiry made for them by Horatio T. Taylor, sheriff of the county of Racine, whose affidavit to that effect is hereto attached, and as this deponent verily believes, they are non-residents of this State. Deponent further says he has been informed, and believes the same to be true, that said
585 defendant Eugene Howland resides at Don Pedro's Bar, in the county of Tolume and State of California, and that said defendant Elias Manchester resides at Levanna, in the county of Cayuga, in the State of New York, and that said defendant Phineas Hardy resides at the town of Le Roy, in the county of Jefferson and State of New York; and further this deponent says not.

HENRY T. FULLER.

Subscribed and sworn to this 7th day of September, A. D. 1861, before me.

WARREN J. DURHAM,
Notary Public.

Filed Febr'y 26th, 1862.

J. S. CRANE, *Clerk.*

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sanford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

It appearing to my satisfaction by the affidavits of Horatio T. Taylor, sheriff of Racine County, and Henry T. Fuller, one of the attorneys for the plaintiff in the above-entitled action, that said action was
586 commenced for the foreclosure and satisfaction of a mortgage upon real property, situated within the said county of Racine, and that the above-named defendants, Eugene Howland, Elias Manchester, and Phineas Hardy, have an interest in this action, but that said defendants cannot be found within the State of Wisconsin, after diligent search and inquiry made for them by said sheriff, and that the said defendant Eugene Howland resides at Don Pedro's Bar, in the county of Tolume and State of California; and that said defendant Elias Manchester resides at Lavanna, in the county of Cayuga, in the State of New York; and that said defendant Phineas Hardy resides in the town of Le Roy, in the county of Jefferson and State of New York; and on motion of Strong & Fuller, plaintiff's attorneys in this action, I do hereby order that the amended summons in the action (a copy of which amended summons is hereto attached, marked "A") be served on said defendants by the publication thereof, as required by law, once in each week for six successive weeks in the newspaper printed in said county of Racine, called the Weekly Racine Advocate; and I do hereby order that a copy of the summons, and notice of object of action, and a copy of the amended summons, and of the amended notice of object of action in this suit be forthwith deposited in the post-office at the city of Racine, in said county, enclosed in an envelope, with the postage thereon prepaid, and addressed to said defendant Elias Man-
587 chester, at Levanna, in the county of Cayuga and State of New York; and that a copy of the summons and of the complaint, and a copy of the amended summons and of the amended complaint in this action, be forthwith deposited in said post-office, enclosed in an envelope, with the postage thereon prepaid, and addressed to said defendant Eugene Howland, at Don Pedro's Bar, in the copy of Tolume and State of California; and that a copy of the summons and notice of object of action, and a copy of amended summons and of the amended notice of object of action in this suit, be forthwith deposited in the post-office at the city of Racine, in said county, enclosed in an envelope, with the postage thereon prepaid, and addressed to the said defendant Phineas Hardy, in the town of Le Roy, in the county of Jefferson and State of New York.

Dated at Racine this 7th day of September, A. D. 1861.

W. E. WORDING,
County Judge.

Fees, $1.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, W'm P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, & Elias Manchester, defendants.

Summons for relief.

588 The State of Wisconsin to the above-named defendants:

You are hereby summoned and required to answer the amended complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said amended complaint, upon the subscribers, at their office in the city & county of Racine, within ninety days after the service hereof, exclusive of the day of such service, and if you fail to answer the said amended complaint within the time aforesaid, the said plaintiff will apply to the court for the relief demanded in the amended complaint. Said complaint is on file in the office of the clerk of said court at the city of Racine, in said county.

Witness the Hon. David Noggle, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 5th day of September, A. D. 1861.

[SEAL.]

JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Plaintiff's Attorneys.

Filed Feb'y 26th, 1862.

J. S. CRANE, *Clerk.*

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, & Elias Manchester, defendants.

589 STATE OF WISCONSIN,
Racine County, ss:

Alpheus E. Clark, being duly sworn, says that on the 7th day of Sep-

tember, 1861, at the city of Racine, in said county, he deposited in the post-office copies of the summons and amended summons and of the notice of the object of action, and of the amended notice of object of action, and of the complaint, and of the amended complaint in the above-entitled action, enclosed and addressed as follows, to wit: a copy of the summons and of the notice of object of action, and a copy of the amended summons, and of the amended notice of object of action, enclosed in an envelope, with the postage thereon prepaid, and addressed to the defendant Phineas Hardy, at the town of Leroy, Jefferson County, in the State of New York; a copy of the summons and notice of object of action, and of the amended summons, and of the amended notice of object of action, enclosed in an envelope, with the postage thereon prepaid, and addressed to the defendant, Elias Manchester, at Levanna, Cayuga County, in the State of New York; a copy of the summons and complaint, and of the amended summons and of the amended complaint, enclosed in an envelope, with the postage thereon prepaid, and addressed to the defendant, Eugene Howland, at Don Pedro's Bar, Tolume County, in the State of California; and further this deponent says not.

A. E. CLARK.

Subscribed and sworn to this 20th day of September, A. D. 1861, before me.

WARREN J. DURHAM,
Notary Public.

Filed Feb. 26, 1862.

J. S. CRANE, *Clerk.*

590 STATE OF WISCONSIN,
Racine County, ss:

Adam C. Sandford, being duly sworn, deposes and says that he is one of the publishers of the Weekly Racine Advocate, a newspaper printed and published in the city and count' of Racine, Wisconsin, and that an advertisement, of which the annexed is a printed copy, cut from said paper, has been regularly published in said paper once in each week for seven weeks successively, commencing Sept. 11th, 1861.

ADAM C. SANDFORD.

Subscribed and sworn to before me this 4th day of February, 1862.
[L. S.] WARREN J. DURHAM,
Notary Public.

Filed Feb'y 26th, 1862.

Circuit court for the county of Racine.

STATE OF WISCONSIN:

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants. } Summons for relief.

The State of Wisconsin to the above-named defendants:

You are hereby summoned and required to answer the amended

complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office in the city and county of Racine, in said county, within ninety days after the service hereof, exclusive of the day of such service; and if you fail to answer the said amended complaint within the time aforesaid, the said plaintiff will apply to the court for the relief demanded in the amended complaint. Said complaint is on file in the office of the clerk of said court, at the city of Racine, in said county.

Witness the Hon. David Noggle, judge of the first judicial circuit for the State of Wisconsin, at the city of Racine, this 5th day of September, A. D. 1861.

[L. S.] JACOB S. CRANE,
Clerk of the Court.

STRONG & FULLER,
Plaintiff's Attorneys.

Fees, $\$7\frac{55}{100}$.

591 Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

STATE OF WISCONSIN,
Racine County, ss:

Henry T. Fuller, of said county, being duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action; that said action was commenced for the foreclosure and satisfaction of a mortgage upon real property situate within the said county of Racine; that no answer or demurrer to the complaint in this action has been put in by any of said defendants; that the time for answering said complaint has fully expired. Deponent further says that on the 10th day of August, A. D. 1861, a notice of the pendency of said action was duly filed in the office of register of deeds of said county of Racine, that being the county where said mortgaged premises are situated; and further this deponent says not.

HENRY T. FULLER.

Subscribed and sworn to this 26th day of Febr'y, A. D. 1862, before me.

[SEAL.] WARREN J. DURHAM,
Notary Public.

Filed Febr'y 26th, 1862.

J. S. CRANE, *Clerk.*

592 STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, and others, defendants.

Before the circuit court for the county of Racine, in the State of Wisconsin, at the February special term thereof.

On filing proof of the service of the summons in this action upon all the defendants therein, either personally or by publication, as required by law and the order of this court, and no answer to the complaint having been put in by either or any of said defendants, and the period for said defendants to answer having expired, on motion of Strong & Fuller, attorneys for the plaintiff, it is hereby ordered that it be referred to Warren J. Durham, esq., of the city and county of Racine, as referee, to compute and ascertain the amount due and unpaid to the said plaintiff on the said bond and mortgage set forth and mentioned in the said complaint; to take the testimony in this action, and proofs as to the allegations and statements contained in the said complaint; to examine the said plaintiff or his agent on oath, as to any payment or payments that may have been made to the said plaintiff, or to any person
593 for his use on account of the demand mentioned in said complaint; to ascertain the amount due the said plaintiff for moneys paid by him in satisfaction for tax-liens on said mortgaged premises for the purpose of protecting his mortgaged interests; to ascertain if there are now any liens upon said mortgaged premises for taxes or assessments; also to ascertain by proofs the amount of the expenses paid and incurred by the said plaintiff in foreclosing the said mortgage over and above the taxable costs for attorney fees or otherwise, and to report the same to this court without delay.

Dated at Racine this 26th day of February, A. D. 1862.

By the court.

DAVID NOGGLE,
Judge.

Filed Feb'y 26, 1862.

J. S. CRANE, *Clerk.*

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, & Elias Manchester, defendants.

594 To the circuit court for the county of Racine, in the State of Wisconsin:

In pursuance and in virtue of an order of this court, made in the

above-entitled action, and bearing date the day of February, A. D. 1862, by which it was referred to me to compute, ascertain, and report the amount due to the plaintiff for principal and interest on the bond and mortgage mentioned and described in the complaint in this action, to take the testimony in this action, and to take proof of the facts and circumstances stated in the said complaint; to ascertain the reasonable amount due said plaintiff upon said mortgage for expenses incurred by him in foreclosing said mortgage over and above the taxable costs in this action; to ascertain the amount of liens on the mortgaged premises for taxes and assessments, and to examine the plaintiff or his agent on oath as to any payments that have been made to said plaintiff, or to any person for his use, on account of the demand mentioned in said complaint, and to report to this court thereon with all convenient speed: I, the subscriber, do respectfully certify and report that I have computed and ascertained the amount due to the plaintiff in this action on the bond and mortgage named in said complaint, and that the amount so due on the said bond and mortgage for the principal and interest up to and including the date of this report is the sum of eight thou-
595 sand eight hundred and sixty-six dollars and eighty-two cents; that I have ascertained the amount due the plaintiff upon said mortgage for the reasonable expenses incurred by him in foreclosing said mortgage over and above the taxable costs in this action, and that the amount so due is the sum of one hundred and twenty-five dollars. I further certify and report that I have taken the testimony in this action, and the proof of the facts and circumstances stated in said complaint, and I am of the opinion that the facts and circumstances stated in said complaint are true; and I further certify and report that I have examined Isaac Taylor, the plaintiff, on oath as to any payments that may have been made to said plaintiff or to any person for his use on account of the demand mentioned in said complaint, which testimony and examination are herewith returned, and made a part of this my report. All of which is respectfully submitted and reported.

Dated this 26th day of February, A. D. 1862.

WARREN J. DURHAM,
Referee.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrators of the estate of David H. Johnson, deceased, George Q. Erskine, and others, defendants.

596 Testimony taken in the above-entitled action, before Warren J. Durham, referee.

The plaintiff produced and offered in evidence the bond named and described in the complaint, which is hereto attached, marked "A," also the mortgage named and described in said complaint, which is hereto attached, marked "D."

CHARLES W. BENNETT, first being duly sworn, says: I am an attorney at law. I am acquainted with and know the value of the services

necessary to be performed in foreclosing mortgages. I have looked over the papers in this action, for the purpose of ascertaining and determining the value of the services in this action, rendered and to be rendered by the attorny for the plaintiff, over and above the taxable costs in this action, and that such services are reasonably worth the sum of one hundred and twenty-five dollars.

C. W. BENNETT.

ISAAC TAYLOR, being duly sworn, says he is the plaintiff in this action, and that no payment or payments have at any time been made to the plaintiff, or to any other person for the use of the plaintiff, on account of the demand mentioned in said complaint and secured by the mortgage named therein, except what is endorsed on said bond.

I. TAYLOR.

RICHMOND W. HOWLAND, being produced as a witness for and
597 on behalf of the plaintiff, and first being duly sworn in said action to testify the truth, the whole truth, and nothing but the truth, says: At the time, to wit, the 21st day of October, 1857, the bond and mortgage described in the complaint in this action were executed, I was the attorney in fact of the defendant Eugene Howland, who by me, as such attorney, made and executed said bond and mortgage; that for and during some time prior to said 21st October, 1857, I was, and ever since that time have been, and now am, the attorney in fact for said defendant Eugene Howland; that said bond and mortgage were given and executed for the purpose of securing the payment the amount the defendant Eugene Howland owed the plaintiff Isaac Taylor, for moneys and materials in building and erecting the building now situate and being on the lots described in said mortgage; that I have looked over the computation of the amount due and unpaid on said bond and mortgage, and have ascertained by computation that there is now due and unpaid to said plaintiff, upon said bond and mortgage, for principal and interest, the sum of eight thousand eight hundred and sixty-six dollars and eighty-two cents, over and above all payments and offsets; that I have, as such attorney, done all the business, and still continue to do the business, with said plaintiff concerning said bond and mortgage.

RICHMOND W. HOWLAND.

I hereby certify that the within and foregoing is the testimony
598 taken by me in this action, and the whole of the same.

Dated Feb'y 26th, A. D. 1862.

WARREN J. DURHAM,
Referee.

A.

Know all men by these presents that I, Eugene Howland, a resident of the State of California, by my agent and attorney, Richmond W. Howland, of the city and county of Racine, in the State of Wisconsin, am held and firmly bound unto Isaac Taylor, of said city of Racine, in the sum of fourteen thousand dollars, to be paid to the said Taylor, or his assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, and dated this twenty-first day of October, 1857. Whereas the said Eugene Howland has borrowed of the said Isaac Taylor seven thousand dollars, and has agreed to pay the same to said Taylor on the

first day of January, 1860, and to pay interest on the same semi-annually from this date, at the rate of ten per cent. per annum, and to keep the building he is now erecting on lot twelve, in block eighteen, in the first ward of said city of Racine, insured for the sum of seven thousand dollars, in responsible insurance companies, and the policies of such insurance asigned to said Taylor from the time such building shall be completed until said sum and interest thereon shall be fully paid, and to pay all taxes and assessments on said lot twelve, and
599 on lot four (4) in the same block, before the expiration of sixty days after said lots, or either of them, shall have been sold for the non-payment of such taxes or assessments; and whereas the said Eugene Howland and the said Taylor have mutually agreed that said insurance shall be subject to the approval of said Taylor, and in case such insurance shall not at any time be effected, and the policies assigned as above provided, then the said Taylor or his assigns may cause said building to be insured in his own name for the same amount, and that the amount he shall pay for such insurance shall be added to and become part of the moneys secured to be paid by this bond, and shall be due and collected, with interest at the rate of twelve per cent. per annum, at the next semi-annual payment of interest on this bond; that in case any of the interest-money secured to be paid hereby shall remain unpaid for ten days after due, then the principal sum hereby secured shall bear and draw interest thereafter at the rate of twelve per cent. per annum, payable semi-annually on the days above stated; that said Eugene Howland may make payments, of not less than one thousand dollars each, at any time, upon giving said Taylor sixty days' notice in writing thereof; that said Eugene Howland may extend the time of payment of two-thirds of the amount of said principal sum, one-third
600 to the first day of January, A. D. 1861, and the other third to the first day of January, 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-annually, upon his giving said Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend; and that in case there shall be such an extension, all the terms and conditions of this bond shall be applicable to the extended loan; that in case said Eugene Howland shall fail to pay any installment of interest or any money paid for insurance for sixty days after the same shall become due, or any taxes or assessments as above agreed to be paid, then that said principal sum with the unpaid interest thereon shall become immediately due and collectable.

Now the condition of the above obligation is such that if said Eugene Howland shall well and truly perform each and *and* all of his above recited agreements, then this obligation shall be void; otherwise it shall be and remain in full force.

EUGENE HOWLAND, [SEAL.]
By his att'y, RICHMOND W. HOWLAND.

In presence of—
MARSHALL M. STRONG.

Received, Racine, January 15th, 1859, all interest-money due on this bond, or becoming due up (to) the twenty-first day of January, 1859.
I. TAYLOR.

Rec'd, Racine, Nov. 22nd, 1859, two hundred and sixty-five dollars to apply on interest.

$734.66. Racine, Jan'y 1st, 1862, received on this bond by excess
601 of rents over disbursements to this date seven hundred and thirty-four and $\frac{66}{100}$.

This indenture, made the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-seven, between Eugene Howland, of the State of California, by his attorney, Richmond W. Howland, of the city and county of Racine, in the State of Wisconsin, party of the first part, and Isaac Taylor, of said city of Racine, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of seven thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, forever, all those two certain pieces or parcels of land, situate in the first ward of said city of Racine, known and described as lots numbers four (4) and twelve (12), in block number eighteen (18), as the same are marked on the original plot of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine:

To have and to hold the above-bargained premises, with the appurtenances, to the said party of the second part, his heirs and assigns, to their sole use forever: Provided always, and these presents
602 are upon this express condition, that if the said Eugene Howland, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the said party of the second part, his heirs, executors, or assigns, the sum of seven thousand dollars on the first day of January, 1860, and interest on the same, semi-annually, at the rate of ten per cent. per annum, and shall keep the building now being erected on said lot number twelve insured for the sum of seven thousand dollars in responsible insurance companies, and the policies of such insurance assigned to said Taylor, from the time such building shall be completed until said sum and interest thereon shall be fully paid, and shall pay all taxes and assessments on the above described premises before the expiration of sixty days after said lots or either of them shall have been sold for the non-payment of such taxes or assessments, and shall make the above-mentioned insurance in companies to be approved by said Taylor, and in case said insurance shall not at any time be effected and the policies assigned, as above provided, said Taylor may cause such building to be insured in his own name for the same amount, and the amount he shall pay therefor shall be added to and become a part of the moneys secured by the bond hereinafter mentioned, and shall be due and collectable, with interest at the rate of twelve per cent. per annum, at the next semi-annual payment of
603 interest on said bond; and in case any of the interest money above named shall remain unpaid for ten days after due, then the principal sum hereby secured shall bear and draw interest thereafter at the rate of twelve per cent. per annum, payable semi-annually at the times above-stated; said Eugene Howland having the privilege of making payments, of not less than one thousand dollars each, at any time upon giving said Taylor sixty days' notice in writing thereof; said Eugene Howland having the privilege of extending the time of payment of two-thirds of the amount of said principal sum, one third to the first day of January, 1861, and the other third to the first day of January, 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-annually, upon giving said Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend; and in case there shall be such an extension, then all the terms and conditions of said bond shall be applicable to the extended loan;

and in case said Eugene Howland shall fail to pay any installment of interest, or any money paid for insurance for sixty days after the same shall become due, or any taxes or assessments as above agreed to be paid, then said principal sum, and the unpaid interest thereon, shall become immediately due and collectable, according to the condition of a certain bond, bearing even date herewith, executed by the said
604 Eugene Howland to the said party of the second part, and shall pay all costs and expenses which the said party of the second part, his heirs or assigns, may be put to, incur, or sustain in collecting the said bond, or in foreclosing this mortgage, for attorney, soliciter, or counsel-fee, or otherwise, then these presents and the said bond shall cease and be null and void.

And the said Eugene Howland does further covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, to pay, or cause to be paid, the said sum of money above mentioned at the time and in the manner above mentioned, together with all such costs and expenses, and to pay all taxes and assessments of every nature that may be assessed on said premises previous to the payment of said sum of money above mentioned. And in case of the non-payment of said sum, or any part thereof, at the time above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises before sale thereof for said taxes, then, and in that case, it shall and may be lawful for the said party of the second part, his heirs, executors, and administrators, or assigns, and the said party of the first part does hereby covenant and agree, and by these presents empower and authorize, said party of the second part, his heirs, executors, and administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with
605 the appurtenances, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such cases made and provided, rendering the surplus moneys, if any there be, to the said party of the first part, his heirs, executors, administrators, or assigns, after deducting the principal and interest moneys so due as aforesaid, and the costs and expenses of such vendue as aforesaid.

In witness whereof the said party of the first part have hereunto set his hand and seal the day and year first above written.

EUGENE HOWLAND, [SEAL.]
By his att'y, RICHMOND W. HOWLAND.

Signed, sealed, and delivered in the presence of—
MARSHALL M. STRONG.
HENRY T. FULLER.

STATE OF WISCONSIN,
County of Racine, ss:

On the twenty-first day of October, A. D. 1857, came personally before the subscriber, a notary public in and for said county, Eugene Howland, by his attorney, Richmond W. Howland, to me known to be the person described in and who executed the within mortgage, and acknowledged that he had executed the same, and for the uses and purposes therein set forth. And the said Richmond W. Howland acknowledged that he executed the same as the attorney for said Eugene Howland, for the uses and purposes therein set forth.

MARSHALL M. STRONG,
Notary Public.

606 Received for record November 5th, A. D. 1857, at 3¼ o'clock p. m., and recorded in volume Y of mortgages, pages 141, 142, and 143.

WM M. SHEPHERD,
Register of Deeds, Racine Co., Wis.

Filed Feb'y 26, 1862.

J. S. CRANE, *Clerk.*

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased, and others, defendants.

STATE OF WISCONSIN,
Racine County, ss:

Henry T. Fuller, being duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action; that there has been incurred or expended for necessary disbursements in said action the sum of six dollars for an abstract of title and the further sum of sixty-eight cents for postage.

HENRY T. FULLER.

Subscribed and sworn to this 26th day of February, A. D. 1862, before me.

[SEAL.] WARREN J. DURHAM,
Notary Public.

Filed Feb'y 26, 1862.

J. S. CRANE, *Clerk.*

607 STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, & others, defendants.

Before the circuit court for the county of Racine, in the State of Wisconsin, at the February special term thereof, A. D. 1862.

This action having this day been brought on to trial, and a hearing upon the complaint filed therein, and the report of Warren J. Durham, a referee, duly appointed by this court, which report bears date the 26th day of February, A. D. 1862, and was made in pursuance of an order of this court, referring it to Warren J. Durham to compute and ascertain the amount due and unpaid to the plaintiff on the bond and mortgage mentioned in the said complaint; also, the amount due and unpaid

on the said mortgage, which he has sustained and incurred over and above the taxable costs in this action, for the expenses in foreclosing said mortgage, for attorney fees & otherwise, and also to take
608 proof of the facts and circumstances stated in the complaint.

On reading said report, which is now on file, now therefore the court finds as matter of fact, 1: That the defendant, Eugene Howland, by his attorney, Richmond W. Howland, executed the bond and mortgage described in said complaint, as therein alleged; 2, that there is now due and unpaid for principal and interest on said mortgage eight thousand eight hundred and sixty-six dollars and eighty-two cents (8,886.82); 3, that the reasonable expenses incurred by the plaintiff in foreclosing said mortgage, for services of attorney and counsel, over and above the taxable costs in this action, are one hundred and twenty-five dollars; 4, that on or about the 24th day of January, A. D. 1860, said plaintiff released lot number four, mentioned in said mortgage, from the lien thereof, and accepted the balance of the mortgaged premises as his security.

As conclusions of law the court finds:

1. That the plaintiff is entitled to recover of the defendant Eugene Howland, the sum of eight thousand eight hundred and sixty-six dollars and eighty-two cents for principal and interest on said bond and mortgage, up to and including the date of said report, the sum of one hundred and twenty-five dollars, reasonable expenses incurred by said plaintiff in foreclosing said mortgage, for services of attorney and counsel, over and above the taxable costs in this action. 2. That
609 the plaintiff is entitled to the usual judgment of foreclosure and sale against lot number twelve, mentioned in said mortgage, and none other.

Dated this 26th day of February, A. D. 1862.

By the court:

DAVID NOGGLE, *Judge.*

Filed Feb'ry 26th, 1862, 9½ o'clock, a. m.

J. S. CRANE.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smythe, Charles Jones, Ira C. Payne, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

Before the circuit court for the county of Racine, in the State of Wisconsin, at the February special term thereof, A. D. 1862.

610 This action having this day been brought on to trial, and a hearing upon the amended complaint and other papers filed therein, and the report of Warren J. Dunham, referee, duly appointed by

this court, which report bears date the 4th day of February, A. D. 1862, and was made in pursuance of an order of this court heretofore made in this action, referring it to said Warren J. Dunham, to compute and ascertain the amount due and unpaid to the plaintiff on the bond and mortgage mentioned in the said complaint, also the amount due and unpaid to the said plaintiff on the said mortgage, which he has incurred and sustained over and above the taxable costs in this action, for the expenses in foreclosing said mortgage, for the attorney's fees, and otherwise, and also to take proof of the facts and circumstances stated in the complaint; on reading said report, which is now on file, from which it appears that there was due and unpaid to the said plaintiff, at the date of said report, for said principal and interest, the sum of eight thousand eight hundred and sixty-six dollars and eighty-two cents, for the expenses incurred in foreclosing said mortgage, for attorney's fees and otherwise, over and above the taxable costs in this action, the sum of one hundred and twenty-five dollars, and that the facts and averments stated in said complaint are true; and on reading the affidavit of Henry T. Fuller, one of the attorneys for said plaintiff, proving that no answer or demurrer to the complaint in this ac-
611 tion has been put in by any of said defendants, and that the time for answering said complaint has fully expired, and that due notice of the pendency of the action was duly filed in the office of the register of deeds in and for the county of Racine, on the 12th day of September, A. D. 1861; and on motion of Strong & Fuller, attorneys for the plaintiff, it is ordered, adjudged, and decreed, and this court, by virtue of the authority therein vested, doth order, adjudge, and decree, that the proceedings in this action do stand ratified and confirmed; that the said report of said referee, and all things therein contained, do stand ratified and confirmed. It is further ordered, adjudged, and decreed, that all and singular the said mortgaged premises described in said complaint in this action, and hereinafter described, or so much thereof (and which may be sold in parcels without injury to the parties interested) as may be sufficient to raise the amount due and unpaid to the plaintiff on said bond and mortgage for principal and interest, and to pay the costs of this action, the amount of the costs and expenses incurred by said plaintiff, over and above the taxable costs in this action, in foreclosing said mortgage, and the cost of such sale, be sold at public auction, in the county of Racine, by or under the direction of the sheriff of said Racine County; that the said sheriff give public notice
612 of the time and place of such sale, according to the law and practice of this court; that either or any of the parties to this action may become the purchaser or purchasers at such sale; that the said sheriff execute to the purchaser or purchasers a deed or deeds of the premises sold on such sale; that the said sheriff, out of the moneys arising on such sale, retain his fees, disbursements, and the expenses of such sale; that he pay to the proper officers the amount of any lien or liens upon the premises so sold at the time of such sale, for taxes or assessments; that he pay to the said plaintiff, or his attorneys, the sum of seventy-eight dollars and twenty cents ($78.20), the costs as taxed in this action, which are hereby adjudged to the said plaintiff, the sum of eight thousand nine hundred and ninety-one dollars and eighty-two cents ($8,991.82), for principal and interest due and unpaid upon the said bond and mortgage, the amount of expenses incurred and paid by the said plaintiff in foreclosing said mortgage, over and above the costs as taxed in this action, with interest on the said several sums from the date hereof, or so much thereof as the purchase-money of the said

mortgaged premises will pay of the same, and to take receipts for the same, and to file such receipts with his report of sale; that he bring the surplus moneys arising from such sale, if any there shall be, into court without delay, to abide the further order of this court; that he make a report of such sale and file it with the clerk of
613 this court, with all convenient speed; and it is ordered, adjudged, and decreed that the said defendants, and each and every one of them, and all persons claiming or to claim from or under them, or any or either of them, and all persons having a lien subsequent to such mortgage, by judgment or decree, upon the premises described in said mortgage and hereinafter described, and his or their heirs, personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof. And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, and that any of the parties to this action who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this action, has come into possession of said premises, or any part thereof, deliver possession thereof to such purchaser or purchasers on production of the sheriff's deed for such premises. And it is further ordered, adjudged, and decreed that if the moneys aris-
614 ing from the said sale of said mortgaged premises shall be insufficient to pay the amount of the several sums and liens hereinabove ordered and adjudged to be paid, with interest thereon to the day of such payment, and the expenses of such sale as aforesaid, that the said sheriff specify the amount of such deficiency in his report of such sale, and that on the coming in and confirmation of such report the defendant, Eugene Howland, who is personally liable for the payment of the debt secured by the said mortgage, pay to the said plaintiff the amount of such deficiency, with interest thereon from the date of such last-mentioned report, and that the plaintiff have execution thereof. The following is a description of the mortgaged premises authorized and ordered to be sold under and by virtue of this judgment: All that certain piece or parcel of land situate in the first ward of said city of Racine, known and described as lot number twelve (12), in block number eighteen, as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine.

Dated at Racine this 26th day of February, A. D. 1862.

By the court.

DAVID NOGGLE, *Judge.*

Recorded in judgment-book C, page' 931, 932, and 933.

Filed Feb. 26, 1862, at 9½ o'clock a. m.

J. S. CRANE, *Clerk.*

615 STATE OF WISCONSIN:

ISAAC TAYLOR, PLAINTIFF, *against* EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Church, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.	Circuit court, Racine County.

To the circuit court of Racine County:

In pursuance and in virtue of a judgment of this court, made in the above-entitled action at the February term thereof, and bearing date the twenty-sixth day of February, A. D. 1862, by which it was, among other things, ordered and adjudged that all and singular the mortgaged premises mentioned in the complaint in this action, and hereinafter described (unless the defendants should, previous to the day of sale, pay the amount found to be due to the plaintiff according to said judgment), be sold at public action, by or under the direction of the
616 sheriff of Racine County, where the mortgaged premises are situate; that said sheriff give notice of the time and place of such sale by advertisement, pursuant to law and the practice of this court, and that the plaintiff or any other parties in this action might become the purchaser; that the said sheriff execute a deed or deeds to the purchaser of said mortgaged premises on the said sale, and that the said sheriff pay to the said plaintiff or his attorney out of the proceeds of the said sale the taxed costs, allowance, &c., in this action, and also the amount found to be due on said judgment, together with the legal interest thereon, from the date of said judgment (after deducting the amount of his fees and the expenses on such sale), or so much thereof as the purchase-money of the said mortgaged premises will pay of the same, and that the sheriff take receipts for the amount so paid, and file the same with his report of sale; and that he bring the surplus moneys arising from such sale, if any there should be, into court without delay, to abide the further order of the court. And whereby it was further ordered and adjudged that if the moneys arising from the said sale should be insufficient to pay the amount so found due to the plaintiff, with the interest and costs as aforesaid, that the said sheriff specify the amount of such deficiency in his report of sale, I, Horatio T. Taylor, the
617 subscriber, the sheriff of the county of Racine aforesaid, in the State of Wisconsin, do respectfully certify and report that, at the request of the plaintiff's attorney, and in the execution of the said judgment, I advertised said premises to be sold by me at the court-house, in the city and county of Racine, at two o'clock in the afternoon, on the nineteenth day of June, A. D. 1862; that previous to the said day of sale I caused notice thereof to be publicly advertised for three months successively, as follows, to wit, by causing a copy of such notice to be printed once in each week during the three months immediately preceding said sale in the Weekly Racine Advocate, a public newspaper printed in said county of Racine, which notice contained a brief but intelligible description of the said mortgaged premises; that at two o'clock

mortgaged premises will pay of the same, and to take receipts for the same, and to file such receipts with his report of sale; that he bring the surplus moneys arising from such sale, if any there shall be, into court without delay, to abide the further order of this court; that he make a report of such sale and file it with the clerk of
613 this court, with all convenient speed; and it is ordered, adjudged, and decreed that the said defendants, and each and every one of them, and all persons claiming or to claim from or under them, or any or either of them, and all persons having a lien subsequent to such mortgage, by judgment or decree, upon the premises described in said mortgage and hereinafter described, and his or their heirs, personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof. And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, and that any of the parties to this action who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this action, has come into possession of said premises, or any part thereof, deliver possession thereof to such purchaser or purchasers on production of the sheriff's deed for such premises. And it is further ordered, adjudged, and decreed that if the moneys arising
614 from the said sale of said mortgaged premises shall be insufficient to pay the amount of the several sums and liens hereinabove ordered and adjudged to be paid, with interest thereon to the day of such payment, and the expenses of such sale as aforesaid, that the said sheriff specify the amount of such deficiency in his report of such sale, and that on the coming in and confirmation of such report the defendant, Eugene Howland, who is personally liable for the payment of the debt secured by the said mortgage, pay to the said plaintiff the amount of such deficiency, with interest thereon from the date of such last-mentioned report, and that the plaintiff have execution thereof. The following is a description of the mortgaged premises authorized and ordered to be sold under and by virtue of this judgment: All that certain piece or parcel of land situate in the first ward of said city of Racine, known and described as lot number twelve (12), in block number eighteen, as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine.

Dated at Racine this 26th day of February, A. D. 1862.

By the court.

DAVID NOGGLE, *Judge.*

Recorded in judgment-book C, page 931, 932, and 933.

Filed Feb. 26, 1862, at 9½ o'clock a. m.

J. S. CRANE, *Clerk.*

615 STATE OF WISCONSIN:

ISAAC TAYLOR, PLAINTIFF, *against* EUGENE HOWLAND, PHINEAS HARDY, JOHN W. English, administrator of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Church, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.	Circuit court, Racine County.

To the circuit court of Racine County:

In pursuance and in virtue of a judgment of this court, made in the above-entitled action at the February term thereof, and bearing date the twenty-sixth day of February, A. D. 1862, by which it was, among other things, ordered and adjudged that all and singular the mortgaged premises mentioned in the complaint in this action, and hereinafter described (unless the defendants should, previous to the day of sale, pay the amount found to be due to the plaintiff according to said judgment), be sold at public action, by or under the direction of the
616 sheriff of Racine County, where the mortgaged premises are situate; that said sheriff give notice of the time and place of such sale by advertisement, pursuant to law and the practice of this court, and that the plaintiff or any other parties in this action might become the purchaser; that the said sheriff execute a deed or deeds to the purchaser of said mortgaged premises on the said sale, and that the said sheriff pay to the said plaintiff or his attorney out of the proceeds of the said sale the taxed costs, allowance, &c., in this action, and also the amount found to be due on said judgment, together with the legal interest thereon, from the date of said judgment (after deducting the amount of his fees and the expenses on such sale), or so much thereof as the purchase-money of the said mortgaged premises will pay of the same, and that the sheriff take receipts for the amount so paid, and file the same with his report of sale; and that he bring the surplus moneys arising from such sale, if any there should be, into court without delay, to abide the further order of the court. And whereby it was further ordered and adjudged that if the moneys arising from the said sale should be insufficient to pay the amount so found due to the plaintiff, with the interest and costs as aforesaid, that the said sheriff specify the amount of such deficiency in his report of sale, I, Horatio T. Taylor, the
617 subscriber, the sheriff of the county of Racine aforesaid, in the State of Wisconsin, do respectfully certify and report that, at the request of the plaintiff's attorney, and in the execution of the said judgment, I advertised said premises to be sold by me at the court-house, in the city and county of Racine, at two o'clock in the afternoon, on the nineteenth day of June, A. D. 1862; that previous to the said day of sale I caused notice thereof to be publicly advertised for three months successively, as follows, to wit, by causing a copy of such notice to be printed once in each week during the three months immediately preceding said sale in the Weekly Racine Advocate, a public newspaper printed in said county of Racine, which notice contained a brief but intelligible description of the said mortgaged premises; that at two o'clock

in the afternoon on said nineteenth day of June, A. D. 1862, the day and hour on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place so as aforesaid fixed for said sale, and I exposed said premises for sale at public auction to the highest bidder, and the said premises were there and then fairly struck off as follows, to wit, all and singular the mortgaged premises mentioned & described in the judgment in this action were sold to the plaintiff, Isaac Taylor, for the sum of nine thousand three hundred dollars
618 ($9,300), he being the highest bidder therefor, and that being the highest sum bid for the same; and I do further certify and report that I have executed, acknowledged, and delivered to the said purchaser the usual sheriff's deed for the said premises, and have paid over or disposed of the purchase-money or proceeds of said sale as follows, to wit, I have paid to the plaintiff's attorney the sum of two hundred and three and $\frac{20}{100}$ dollars, being the amount of the costs, &c., of this action, as taxed, and have taken a receipt therefor, which is hereto annexed; I have retained in my hands the sum of thirty-two and seventy-seven one-hundredths ($32.77) dollars, being the amount of my fees, commissions, and disbursements on said sale, as will appear by reference to the statement hereto annexed, to which reference is made; I have also paid to the plaintiff's attorneys the sum of ninety hundred and sixty-four and $\frac{3}{100}$ ($9,064.03) dollars, and have taken a receipt therefor, which is hereto annexed; and I do further certify that the whole of the proceeds of said sale were insufficient to satisfy said judgment in the sum of one dollar and sixty-two cents ($1.62). I further certify that the premises so sold and conveyed as aforesaid were described in said judgment, and in the deed so executed by me as aforesaid, as follows, to wit, all that
619 certain piece or parcel of land situate in the first ward of said city of Racine, known and described as lot number twelve (12), in block number eighteen (18), as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine.

Dated at sheriff's office, Racine, Wis., this 19th day of June, A. D. 1862.

H. T. TAYLOR,
Sheriff of Racine County.

Received, Racine, Wis., June 19th, 1862, from H. T. Taylor, the sheriff of Racine County, who made sale of the premises, under and by virtue of the judgment mentioned in the annexed report, the sum of two hundred and three $\frac{20}{100}$ dollars, being the amount of costs, allowance, &c., in the cause in which said judgment was rendered, as taxed, which costs are paid to by said sheriff, under and by virtue of the provisions of said judgment.

STRONG & FULLER,
Plaintiff's Attorneys.

Received, Racine, Wis., June 19th, 1862, from H. T. Taylor, the sheriff of Racine County, who made the sale of the premises, under and by virtue of the judgment mentioned in the annexed report, the sum of ninety hundred and sixty-four & $\frac{3}{100}$ ($9,064.03) dollars, which sum, being part of the proceeds of the sale of said premises, is received
620 by us, under and by virtue of the provisions of said judgment, being part of the amount adjudged to be paid to said plaintiff, with interest thereon as mentioned in said judgment.

STRONG & FULLER,
Plaintiff's Attorneys.

Note of sheriff's fees, commissions, and disbursements in and about the sale mentioned in the annexed report:

Fee for making sale	$10 00
Drawing, executing, and acknowledging deed	3 00
Making report of sale annexed	3 00
For drawing notice of sale, posting notice, & for travel performed in making sale	1 00
Advertising and affidavit	15 00
Adjournment, & posting notice	0 00
	$32 77

H. T. TAYLOR,
Sheriff of Racine County.

STATE OF WISCONSIN,
Racine County, ss:

John Tapley, being duly sworn, says that the Weekly Racine Advocate is a weekly newspaper printed and published in the city and county of Racine, in the State of Wisconsin, and that it has a general circulation in said county; that he, this deponent, is one of the printers and one of the publishers of the said newspaper; that the notice (a
621 printed copy of which is hereto annexed) was duly and constantly published in said newspaper, once in each and every week, for and during the period of three months immediately prior to the 19th day of June, A. D. 1862; that such publication of said notice was commenced on the 5th day of March, A. D. 1862, and was continued up to and ended on the 19th day of June, A. D. 1862; and deponent further says that said printed copy of notice hereto annexed was taken from said newspaper, and further says not.

JOHN TAPLEY.

Subscribed and sworn to this 19th day of June, 1862, before me.
[SEAL.] A. C. SANDFORD,
Notary Public.

Filed Aug. 5, 1862.

J. L. CRANE, *Clerk.*

Sheriff's foreclosure sale.

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. ENGLISH, administrators of the estate of David H. Johnson, deceased; George Q. Erskine, Thomas C. Jenks, William P. Lyon, John B. Adams, David McDonald, Richard Smyth, Charles Jones, Ira C. Paine, Nelson Millett, Adam C. Sandford, John Tapley, C. Fred. Bliss, Alexander O. Burch, Asa W. Farr, Charles W. Bennett, Egbert Jamieson, j'r, and Elias Manchester, defendants.

In pursuance and virtue of a judgment of the circuit court for the county of Racine, made in the above cause, will be sold under the direc-

tion of the subscriber, at public auction, at the court-house in the city of Racine, and county of Racine, and State of Wisconsin, on Thursday the 19th day of June, A. D. 1862, at two o'clock in the afternoon of that day, all that certain piece or parcel of land situate in the first ward of said city of Racine known and described as lot number twelve (12), in block number eighteen (18), as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine.

Terms cash.

Dated at sheriff's office this 5th day of March, A. D. 1862.

H. T. TAYLOR,
Sheriff of Racine County.

STRONG & FULLER,
Pl'ff's Att'ys.

622 STATE OF WISCONSIN:

Circuit court for the county of Racine.

ISAAC TAYLOR, PLAINTIFF,
against
EUGENE HOWLAND, PHINEAS HARDY, JOHN W. ENGLISH, administrator of the estate of David H. Johnson, deceased, & others, defendants.

Before the circuit court in and for the county of Racine, in the State of Wisconsin.

On reading and filing the report of sale in the above-entitled action, made by Horatio T. Taylor, sheriff of Racine County, in the State of Wisconsin, bearing date the 19th day of June, A. D. 1862; and it appearing to this court that said sale was regularly made according to law, the rules of this court, and the provisions of the judgment entered in said action; and on motion of Strong & Fuller, attorneys for the plaintiff in this action, it is hereby ordered, adjudged, and decreed that the said report of sale, and the sale of the mortgaged premises as described in said report of sale, be, and the same hereby are, ratified and confirmed.

Dated at Racine this 5th day of August, A. D. 1862.

By the court.

DAVID NOGGLE, *Judge.*

Filed Aug. 5, 1862.

J. S. CRANE, *Clerk.*

623 STATE OF WISCONSIN,
Circuit Court, Racine County, ss:

I, Charles S. Chipman, clerk of said court, do hereby certify that I have compared the hereto annexed with the original judgment-roll (including the sheriff's report of sale and order confirming sale) in the action therein entitled, and that the same is a true and correct transcript therefrom and of the wholet hereof, ast he same remain on file in my office.

Witness my hand and the seal of said court this 8th day of July, A. D. 1874.

[SEAL.] CHARLES S. CHIPMAN,
Clerk.

624 *Defendants' Exhibit No. 9.*

Judgment-roll in suit of Wiltse et al. v. Eugene Howland et al.

To the circuit court for the county of Racine:

The petition of Stephen Wiltse and Peter Hetrick respectfully shows to this court that they have been partners in business since the twenty-seventh day of March last under the name, firm, and style of Wiltse and Hetrick, and under such partnership-name have transacted business; that as such partners they sold and delivered to Eugene Howland a quantity of stone and lime at the times, in the quantities, and for the prices specified in the bill of account hereto annexed, marked "Schedule A"; that all of the lime and stone specified in such bill of account, excepting the first five charges in said bill and including the charge of April 6th, 1857, and which amounts to the sum of twenty-three and $\frac{25}{100}$ dollars, were furnished and sold by your petitioners to said Eugene Howland, to be used in the erection and construction of a block of brick stores, upon that certain piece or parcel of land situate in the city of Racine and county of Racine, and known and described as lot number twelve (12), in block number eighteen (18), as the same is marked and described on the original plot of the village of Racine, made by
625 Moses Vilas, surveyor, and now on record in the office of register of deeds of said county of Racine; and that said stone and lime, with the exception above stated, were used by said Eugene Howland in the erection and construction of the brick stores (now partially finished) on said lot.

And your petitioners further show that they are informed and believe, and therefore state, that the said Eugene Howland is the owner of said lot of land above described.

And your petitioners further show that the said stone and lime mentioned in said bill of accounts were sold and delivered to said Eugene Howland upon the order of his agent, Richmond W. Howland, and upon his, the said Eugene Howland's, agreement by his said agent to pay for the same the prices stated in said bill of account.

And your petitioners further show to this court that on the 19th day of November, 1857, they had an accounting together and a settlement with said Eugene Howland, by his said agent, and it was there and then agreed that said bill of account was correct, and that the amount of the same was $826.83, and that the amount of the payments and offsets of said Eugene Howland against the same was $260.49, and
626 that the balance then due to your petitioners on said bill of account and on said settlement was the sum of $566.34, which amount the said Eugene Howland, by Richmond W. Howland, his agent as aforesaid, assented to and promised to pay to your petitioners.

And your petitioners further show that the said first five charges on said bill of account were for lime which was delivered for and used upon another building owned by said Eugene Howland, and that to pay the amount of said five charges a sufficient amount of the credit of $260.49 was to be applied, by the understanding of the parties, to the payment of the same, and your petitioners ask that the same be so applied.

And your petitioners further show to this court that there is now actually due to them from said Eugene Howland, for stone and lime furnished by them for the erection of said brick stores on said lot, the sum of five hundred and sixty-six $\frac{34}{100}$ dollars, with interest thereon from the nineteenth day of November, 1857; and your petitioners claim a lien upon said lot and said brick stores for said amount, under the provisions

of chapter 120 of the Revised Statutes of the State of Wisconsin,
627 and the acts amendatory thereto.

STEPHEN WILTSE.
PETER HETRICK.

STATE OF WISCONSIN,
Racine County, ss:

Stephen Wiltse and Peter Hetrick, being duly sworn, say that they have heard the above petition, by them subscribed, read, and know the contents thereof; that the same is true of their own knowledge, except as to those matters which are stated upon information and belief, and as to those they believe it to be true.

STEPHEN WILTSE.
PETER HETRICK.

Subscribed and sworn this 1st day of December, 1857, before me.
LA FAYETTE PARKER,
Clerk Circuit Court.

Schedule A, referred to in above petition.

Eugene Howland, in account with Wiltse & Hetrick, Dr.

1857.			
March 27th.	To 5 bbls. lime, @ 5c		$3 12
" 28th.	" 10 " " " " "		6 25
" 30 "	" 4 " " " " "		2 50
" 31 "	" 10 " " " " "		6 25
Apr. 6 "	" 5 " " " " "		3 13
Aug. 26 "	" 16 " " " " "		10 00
Sept. 1 "	" 6 " " " " 66c		3 96
" 8.	" 2 loads slack lime by Wiltse's team, 24 bbls., @ 35c		8 40
" 9.	" 12 bbls., by Wiltse's team, slack lime, @ 35c		4 20
" "	" 7 " " Hetrick " " " " "		2 45
1857.			
628 Sept. 10.	To 7 bbls., by Hetric team, slack lime, 35c		2 45
" 11.	" 24 " " Wiltse's " " " "		8 40
" 14.	" 14 " " Hetric " " " "		4 90
" "	" 12 " " Wiltse's " " " "		4 20
" "	" 14 " " Hetric " " " "		4 90
" 15.	" 10 " stone lime, by Peters' team, @ 66c		6 60
" "	" 12 " slack " " Wiltse's " " 35 "		4 20
" 24.	" 11 " stone " " Howland's " " 56 "		6 16
" 25.	" 14 " " " " " " " " "		7 84
" "	" 16 " " " " contract " " 66c		10 56
" 26.	" 10 " " " " Wiltse's " " "		6 60
" 28.	" 16 " " " " " " " "		10 56
" 30.	" 16 " " " " " " " "		10 56
Oct. 1st.	" 16 " " " " " " " "		10 56
" 5.	" 15 " " " " " " " "		9 90
" 6.	" 16 " " " " " " " "		10 56
" 7.	" 16 " " " " " " " "		10 56
" 9.	" 16 " " " " " " " "		10 56
" 10.	" 16 " " " " " " " "		10 56
" 20.	" 16 " " " " " " " "		10 56
" 20.	" 12 " " " " brick-yard team, @ 56c		6 72

Oct.	22.	To 17 bbls. stone lime by Wiltse's team, at 66		11 22
"	23.	" 14 " " " " " " " " "		9 24
"	26.	" 15 " " " " " " " " "		9 90
"	27.	" 14 " lime, by Wiltse's team, " "		9 24
"	29.	" 15 " " " " " " "		9 90
"	30.	" 15 " " " " " " "		9 90
Nov.	3.	" 15 " " " " " " "		9 90
	1857.			
629	Nov.	5. To 27 " stone lime, by Wiltse's team, @ 66c		17 82
	"	6. " 15 " " " " " " " " "		9 90
"		7. " 12 " " " " " " " " "		7 92
"		10. " 14 " " " " " " " " "		9 24
To 70 cords of stone and 64 feet, at seven dollars per cord, delivered at various times between July 1st, 1857, and Nov. 10th, 1857				494 48
Total				826 83

Filed December 1st, 1857, at 2.6 o'clock p. m.

L. F. PARKER, *Clerk.*

Circuit court for the county of Racine, Racine County.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
against
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

To the above-named defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is hereby served upon you, and serve a copy of your answer upon us at our office in the city of Racine, in said county, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as
630 aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint. Said complaint was filed in the office of the clerk of said court, on the second day of December, 1857.

STRONG & FULLER,
Plaintiffs' Attorneys.

Dated Dec. 2d, 1857.

I hereby certify that on the second day of December, 1857, I served the within summons on the within named Isaac Taylor, personally, and delivered to him a true copy thereof. Eugene Howland not found in my county.

T. D. MORRIS, *Sheriff.*

My fees $1.25.
Dec. 2nd, 1857.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
against
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

The complaint of the above-named plaintiffs shows to this court that they sold and delivered to the defendant, Eugene Howland, and, at his

request, the following-described goods, at the times and in the quantities, and for the prices below specified, that is to say:

1857.		
	March 27, 5 bbls. lime, at 62½c. per bbl	$3 12
631	" 28, 10 " " " " " "	6 25
	" 30, 4 " " " " " "	2 50
"	" 31, 10 " " " " " " "	6 25
Apr.	6, 5 " " " " " " "	3 13
Aug.	26, 16 " " " " " " "	10 00
Sep.	1, 6 " " " 66c " " "	3 96
"	8, 2 loads slack-lime by Wiltse's team, 24 bbls. at 35c	8 40
"	9, 12 bbls " " " " at 35c	4 20
"	9, 7 " " " Hetrick's " " "	2 45
"	10, 7 " " " " " " "	2 45
"	11, 24 " " " Wiltse's " " "	8 40
"	14, 14 " " " Hetrick's " " "	4 90
"	14, 12 " " " Wiltse's " " "	4 20
"	14, 14 " " " Hetrick's " " "	4 90
"	15, 10 " stone-lime " Peters' " " 66c	6 60
"	15, 12 " slack-lime " Wiltse's " " 35c	4 20
"	24, 11 " stone-lime " Howland's " " 56c	6 16
"	25, 14 " " " " " " "	7 84
"	" 16 " " " Conrad's " " 66c	10 56
"	26, 10 " " " Wiltse's " " "	6 60
"	28, 16 " " " " " " "	10 56
"	30, 16 " " " " " " "	10 56
Oct.	1, 16 " " " " " " "	10 56
"	5, 15 " " " " " " "	9 90
"	6, 16 " " " " " " "	10 56
"	7, 16 " " " " " " "	10 56
"	9, 16 " " " " " " "	10 56
	" 10, 16 " " " " " "	10 56
632	" 20, 16 stone-lime " Wiltse's team at 66c	10 57
	" 20, 12 " " brick-yard " " 56c	6 72
"	22, 17 " " " Wiltse's " " "	11 22
"	23, 14 " " " " " " "	9 24
"	26, 15 " " " " " " "	9 90
"	27, 14 " " " " " " "	9 24
"	29, 15 " " " " " " "	9 90
"	30, 15 " " " " " " "	9 90
Nov.	3, 15 " " " " " " "	9 90
"	5, 27 " " " " " " "	17 82
"	6, 15 " " " " " " "	9 90
"	7, 12 " " " " " " "	7 92
"	10, 14 " " " " " " "	9 24
70 cords and 64 feet of stone, at $7.00 per cord, delivered at various times between July 1st, 1857, and Nov. 10, 1857		494 48
	Total	$826 83

Amounting, in the whole, to the sum of eight hundred and twenty-six and $\frac{83}{100}$ dollars, and that the defendant, Howland, has paid towards the same two hundred and sixty dollars and forty-nine cents, and that the sum now due to the plaintiffs for said goods is five hundred sixty-six dollars and thirty-four cents, which the defendant, Howland, promised to pay to

the plaintiffs on the 19th day of November, 1857; yet the plaintiffs say that the defendant, Howland, has not complied with his said
633 promise, but, on the contrary thereof, remains indebted thereupon in the said sum of five hundred sixty-six dollars and thirty-four cents, with interest thereon from the 19th day of November, 1857.

And the plaintiffs further show that on the first day of December, 1857, they filed in the office of said circuit court their petition, claiming by virtue of chapter 120 of the revised statutes of the State of Wisconsin, and the acts amendatory thereto, a lien for the amount of the said indebtedness upon that certain piece of land situate in the city of Racine, in said county, known and described as lot number twelve (12), in block number eighteen (18), as the same is marked and described in the original plot of the city of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds of said county, and upon the block of brick stores now being erected thereon.

And the plaintiffs further show that the said stone and lime, and goods above mentioned, with the exception of the first five charges mentioned in said account, were materials furnished by them for the erection and construction of said brick stores, and were used by said defendant, Howland, for that purpose, and that a sufficient portion of the amount
634 above credited to said defendant, Howland, to pay the amount of said first five charges, was, by the agreement of said Howland and the plaintiffs, to be applied towards the payment of the same.

And the plaintiffs further show that said defendant Howland, as they are informed and believe, and therefore state, is the owner of said lot number twelve (12), in block number eighteen (18), and of the brick stores now being erected thereupon.

And the plaintiffs further show that they are informed and believe, and therefore state, that one Isaac Taylor has a mortgage on said premises, executed to him by said Eugene Howland, for the sum of seven thousand dollars, or thereabouts; that said mortgage was executed and became a lien subsequent to the commencement of said brick stores, and subsequent to the lien of the plaintiffs, and was given to secure advances, of which but a small part have yet been made, by said defendant, Isaac Taylor.

Wherefore the plaintiffs demand that it may be adjudged and decreed that they have a lien upon said lot and said stores for the amount of said indebtedness; that this said lien upon said premises is prior to that of the said Isaac Taylor, under and by virtue of his said
635 mortgage; that said premises may be sold at public auction by order of this court; and that the moneys arising from said sale may be brought into court, and that out of the proceeds thereof the said indebtedness to the plaintiffs may be paid, and that judgment may be given for the said plaintiffs for the said sum of five hundred sixty-six dollars and thirty-four cents, besides the costs of this action and of filing such petition, and that the plaintiff may have such other relief, or such further relief, or both, as may be agreeable to equity.

STRONG & FULLER,
Plff's' Att'ys.

STATE OF WISCONSIN,
Racine County, ss:

Stephen Wiltse, of said county, being duly sworn, says that he is one of the plaintiffs mentioned in the above complaint; that he has heard said complaint read, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated

upon information and belief, and as to those matters he believes it to be true.

STEPHEN WILTSE.

Subscribed and sworn before me this 1st day of December, 1857.
LA FAYETTE PARKER,
Clerk Circuit Court.

I hereby certify that on the 2nd day of December, 1857, I served the within complaint on the within-named Isaac Taylor, personally, and delivered to him a true copy thereof.

T. D. MORRIS, *Sheriff.*

My fees, $2.65.
Filed Dec. 2nd, 1857.

636 Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
against
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

Timothy D. Morris, sheriff of said county, being sworn, says that the summons in this action, addressed to the above-named defendant, was delivered to the deponent by Strong & Fuller, the plaintiffs' attorneys, to be served on the said defendants; that he has used due diligence to serve the said summons on the said defendant, Eugene Howland, and that he cannot find the said Howland within this State; and this deponent further states that he is credibly informed and verily believes that said Eugene Howland is a resident of the State of California.

TIMOTHY D. MORRIS.

Subscribed and sworn before me this 4th day of December, 1857.
LA FAYETTE PARKER,
Clerk Circuit Court.

637 Circuit court of the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
ag't
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

Marshall M. Strong, one of the attorneys of the plaintiffs in this action, being sworn, says that a summons has been issued against the defendants in this action; that the complaint in this action has been filed; that the plaintiffs have a cause of action against the defendant, Eugene Howland; that this action is brought to enforce a lien, under the provisions of chapter 120 of the Revised Statutes of the State of Wisconsin, upon real property situate within said county; that said defendant, Howland, is not a resident of this State, but of the State of California, and that he has property within this State, to wit, the real estate to be affected by this action; that this action arises on contract, and that said court has jurisdiction of the subject of this action; that

said Howland is a necessary party to this action, and that the relief demanded therein consists partly in excluding him from a part of his
638 interest in said real property; and that, as he is informed by the annexed affidavit of Timothy D. Morris, said Howland cannot, after due diligence, be found within this State.

MARSHALL M. STRONG.

Subscribed and sworn before me this day of December, 1857.

J. ULLMANN,
Not'y Public.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS, *ag'st* EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

William E. Strong, being sworn, says that he has examined the records in the office of register of deeds in said county, and that he finds recorded there, in volume 37 of deeds, on pages 313 and 314, a power of attorney from said Eugene Howland to one Richmond W. Howland, dated July 30th, 1857, and recorded Oct. 8th, 1857, in which the residence of said Eugene Howland is stated to be in Tuolumne County, in the State of California, and that upon diligent inquiry he has not
639 been able to ascertain the post-office address of said Eugene Howland.

WILLIAM E. STRONG.

Subscribed and sworn before me this 3rd day of Dec., 1857.

LA FAYETTE PARKER,
Clerk Circuit Court.

Filed Decem. 4th, 1857.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK *ag't* EUGENE HOWLAND & ISAAC TAYLOR.

It appearing to my satisfaction, by the affidavits of Timothy D. Morris, Marshall M. Strong, and William E. Strong, that a cause of action exists against the above-named defendant, Eugene Howland, and that this action relates to real estate situate within this State, owned by said Howland, and this action arises on contract, and that said court has jurisdiction of the subject of this action, and that said Howland is not a resident of this State, and cannot after due diligence be found in this State, and that his post-office address cannot be ascertained, I do order that the summons in this action be served on the said defendant, Eugene Howland, by the publication thereof once in each week for six weeks successively in the newspaper published in the said county of
640 Racine called the Racine County Democrat.

Dated Dec. 4th, 1857.

W. C. WORDING,
County Judge.

Fees $1.00.

upon information and belief, and as to those matters he believes it to be true.

STEPHEN WILTSE.

Subscribed and sworn before me this 1st day of December, 1857.
LA FAYETTE PARKER,
Clerk Circuit Court.

I hereby certify that on the 2nd day of December, 1857, I served the within complaint on the within-named Isaac Taylor, personally, and delivered to him a true copy thereof.

T. D. MORRIS, *Sheriff.*

My fees, $2.65.
Filed Dec. 2nd, 1857.

636 Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
against
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

Timothy D. Morris, sheriff of said county, being sworn, says that the summons in this action, addressed to the above-named defendant, was delivered to the deponent by Strong & Fuller, the plaintiffs' attorneys, to be served on the said defendants; that he has used due diligence to serve the said summons on the said defendant, Eugene Howland, and that he cannot find the said Howland within this State; and this deponent further states that he is credibly informed and verily believes that said Eugene Howland is a resident of the State of California.

TIMOTHY D. MORRIS.

Subscribed and sworn before me this 4th day of December, 1857.
LA FAYETTE PARKER,
Clerk Circuit Court.

637 Circuit court of the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
ag't
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

Marshall M. Strong, one of the attorneys of the plaintiffs in this action, being sworn, says that a summons has been issued against the defendants in this action; that the complaint in this action has been filed; that the plaintiffs have a cause of action against the defendant, Eugene Howland; that this action is brought to enforce a lien, under the provisions of chapter 120 of the Revised Statutes of the State of Wisconsin, upon real property situate within said county; that said defendant, Howland, is not a resident of this State, but of the State of California, and that he has property within this State, to wit, the real estate to be affected by this action; that this action arises on contract, and that said court has jurisdiction of the subject of this action; that

said Howland is a necessary party to this action, and that the relief demanded therein consists partly in excluding him from a part of his
638 interest in said real property; and that, as he is informed by the annexed affidavit of Timothy D. Morris, said Howland cannot, after due diligence, be found within this State.

MARSHALL M. STRONG.

Subscribed and sworn before me this day of December, 1857.

J. ULLMANN,
Not'y Public.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS, *ag'st* EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

STATE OF WISCONSIN,
Racine County, ss:

William E. Strong, being sworn, says that he has examined the records in the office of register of deeds in said county, and that he finds recorded there, in volume 37 of deeds, on pages 313 and 314, a power of attorney from said Eugene Howland to one Richmond W. Howland, dated July 30th, 1857, and recorded Oct. 8th, 1857, in which the residence of said Eugene Howland is stated to be in Tuolumne County, in the State of California, and that upon diligent inquiry he has not
639 been able to ascertain the post-office address of said Eugene Howland.

WILLIAM E. STRONG.

Subscribed and sworn before me this 3rd day of Dec., 1857.

LA FAYETTE PARKER,
Clerk Circuit Court.

Filed Decem. 4th, 1857.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK *ag't* EUGENE HOWLAND & ISAAC TAYLOR.

It appearing to my satisfaction, by the affidavits of Timothy D. Morris, Marshall M. Strong, and William E. Strong, that a cause of action exists against the above-named defendant, Eugene Howland, and that this action relates to real estate situate within this State, owned by said Howland, and this action arises on contract, and that said court has jurisdiction of the subject of this action, and that said Howland is not a resident of this State, and cannot after due diligence be found in this State, and that his post-office address cannot be ascertained, I do order that the summons in this action be served on the said defendant, Eugene Howland, by the publication thereof once in each week for six weeks successively in the newspaper published in the said county of
640 Racine called the Racine County Democrat.

Dated Dec. 4th, 1857.

W. C. WORDING,
County Judge.

Fees $1.00.

Copy summons referred to in above order.

Circuit court for the county of Racine.

STATE OF WISCONSIN,
Racine County, ss:

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS,
ag'st
EUGENE HOWLAND & ISAAC TAYLOR, DEFENDANTS.

The State of Wisconsin to the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office in the city of Racine, in said county, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint. Said complaint was filed in the office of the clerk of said court on the second day of December, 1857.

Dated this 2nd of December, A. D. 1857.

STRONG & FULLER,
Pl'ffs' Att'ys.

Filed April 10th, 1858.

641 Circuit court for the county of Racine.

It appearing to my satisfaction, by the affidavits of Timothy D. Morris, Marshall M. Strong, and William E. Strong, that a cause of action exists against the above-named defendant, Eugene Howland, and that this action relates to real estate situate within this State, owned by said Howland, and this action arises on contract, and that said court has jurisdiction of the subject of this action, and that said Howland is not a resident of this State, and cannot after due diligence be found within this State, and that his post-office address cannot be ascertained, I do order that the summons in this action be served on the said defendant, Eugene Howland, by the publication thereof once in each week for six weeks successively in the newspaper printed in the said county of Racine called the Racine County Democrat.

Dated Dec. 4th, 1857.

WILLIAM E. WORDING,
County Judge.

Copy of summons referred to in above order.

STATE OF WISCONSIN,
Racine County, ss:

Circuit court for the county of Racine.

STEPHEN WILTSE AND PETER HETRICK
against
EUGENE HOWLAND AND ISAAC TAYLOR.

642 The State of Wisconsin to the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and

to serve a copy of your answer to said complaint upon the subscribers, at their office in the city of Racine, in said county, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint. Said complaint was filed in the office of the clerk of said court on the second day of December, 1857.

Dated this second day of December, A. D. 1857.

STRONG & FULLER,
Pl'ffs' Att'ys.

Fees: 5.60; 80—$6.40.

STATE OF WISCONSIN,
Racine County, ss:

Z. C. Wentworth, being sworn, says that he is the printer of the Racine County Democrat, a newspaper published in the city of Racine, in said county, and that an advertisement, of which the above is a copy, was duly published in said newspaper for six weeks successively, commencing on Monday, the seventh day of December, 1857, and terminating on Monday, the eighteenth day of January, 1858.

643 ZABDIEL C. WENTWORTH.

Subscribed and sworn before me this 1st day of February, 1858.

WILLIAM E. STRONG,
Notary Public.

Filed Ap'l 10, 1858.

Racine circuit court.

STEPHEN WILTSE & PETER HETRICK, PL'FFS, } *ag't* EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS. }

STATE OF WISCONSIN,
Racine County, ss:

Marshall W. Strong, being sworn, says that he is one of the attorneys for the plaintiffs in the above-entitled action; that no answer or demurrer to the complaint in said action has been received, and that neither of said defendants has appeared in said action.

MARSHALL W. STRONG.

Subscribed and sworn before me this 9th day of February, 1858.

LEVIN WAINWRIGHT,
Notary Public.

Filed Ap'l 10th, 1858.

644 Circuit court for the county of Racine.

STEPHEN WELTSE & PETER HETRICK, PL'FFS, } *ag't* EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS. }

STATE OF WISCONSIN,
Racine County, ss:

Marshall M. Strong, being sworn, says that he is one of the attorneys for the plaintiffs in the above-entitled action; that on the second day of

December, 1857, a notice of the pendancy of this action in the form prescribed by section 37 of chapter 120 of the laws of Wisconsin, passed in the year 1856, and containing, as this deponent believes, correctly and truly all the particulars required by law to be stated in such notice, was filed in the office of register of deeds in the county of Racine, that being the county in which the mortgaged premises are situated, and that since the filing of the said notice the complaint in this action has not been amended in any manner.

MARSHALL M. STRONG.

Subscribed and sworn before me this 9th day of April, 1858.

WILLIAM E. STRONG,
Notary Public.

Filed Ap'l 10th, 1858.

645 Racine circuit court.

STEPHEN WILTSE & PETER HETRICK, PL'FFS, *ag't* EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS.

At a special term of the circuit court for the county of Racine, held at the court-house in the village of Monroe, in the county of Green, on the 1st day of February, 1858, it appearing that the summons in this action has been personally served upon the defendant Isaac Taylor, and that the same has been served on the defendant Eugene Howland, who cannot be found within this State, by the publication thereof as required by law, and the order of William E. Wording, esq., county judge, and no answer to the complaint in this action having been put in by any of said defendants, and the period for said defendants to answer having expired, on filing proof of such service, and that no answer has been put in, on motion of Strong & Fuller, attorneys for the plaintiffs, it is ordered that it be referred to La Fayette Parker, esq., clerk of said court, to take proofs as to the amount due to the plaintiffs on their demand mentioned in the complaint in this action, and to examine the plaintiffs on oath as to any payments that may have been made to them, or to either of them, or to any person for their use, on account of the
646 demand mentioned in said complaint, and which ought to be credited thereon, and to take proof of the facts and circumstances stated in said complaint, and to report as to the same and the amount due, and also such proofs and examinations, to this court with all convenient speed.

Dated March 2nd, 1858.

J. M. KEEP, *Judge.*

Filed April 10th, 1858.

STATE OF WISCONSIN:

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PL'FFS, *ag't* EUGENE ROWLAND & ISAAC TAYLOR, DEF'TS.

To the circuit court for the county of Racine, in the State of Wisconsin:

I, La Fayette Parker, do hereby report and certify that, by virtue of an order entered in the above-entitled action, bearing 2nd March, 1858,

I have taken proofs and the testimony in said action, and have examined the plaintiffs under oath; and that such proofs and examination is as follows, to wit: Stephen Wiltse, first by me being duly sworn, says that he is one of the plaintiffs in the above-entitled action; that no payment or payments have been made to the said plaintiffs or either
647 of them, or to any other person for their use or benefit, upon the account named and set forth in the complaint in this action, than those which are named and set forth in said complaint; that the whole amount claimed to be due and unpaid in said complaint, with interest thereon, is now due and unpaid, and is actually due to the said plaintiffs from the said defendant, Eugene Howland. And the said Stephen Wiltse produced before me the account-books of the said Wiltse and Hetrick, and swore that the same were their account-books kept for that purpose; that they contain the original entries of charges for goods and other articles delivered, and work and labor and other services performed, and materials found; and that such entries are just, to the best of his knowledge and belief; and that said entries are in his own handwriting, and in the handwriting of one Dudley Hubbard, who was at the time the clerk of said plaintiffs; and that said entries were made at or about the time said goods and other articles were delivered, said work and labor and other services were performed, and the said materials were found; that all of the articles mentioned in said complaint were actually delivered to the said defendant, Eugene Howland, at the premises mentioned in said complaint, and used by him for the purpose of erecting the brick stores mentioned in said complaint.

648 Dudley Hubbard, first being by me duly sworn, says that he was clerk of said plaintiffs from the first day of September, 1857, up to the time of the commencing of the suit; that the account-books produced by said Wiltse, and referred to in his testimony, are the account-books of said plaintiffs, kept for that purpose; that the' contain the original entries of charges for goods and other articles delivered, and of work and labor, and of other services performed; and that such entries are just, to the best of his knowledge and belief; and that said entries are either in his handwriting or in the handwriting of said Stephen Wiltse, part of them being in his handwriting, and the rest in the handwriting of said Wiltse; and that said entries were made at or about the time said goods and other articles were delivered, said work and other services were performed, and the said materials were found.

And I further report and certify that the books of account above sworn to were produced before me and offered as evidence; and that I examined the same and found by them that plaintiffs' account, as stated in their complaint, was correct and true; and I further report and certify that there is due to the plaintiffs from the said defendant, Eugene
649 Howland, the sum of five hundred and sixty-six dollars and thirty-four cents, and interest thereon from the second day of December, 1857, up to the date of this action, which interest amounts to $14.86.

And I further report and certify that I am personally acquainted with the premises described in said complaint upon which the lien is claimed, and no part of said premises can be separated from the residue and sold without damage to the whole, without injury to the parties interested.

Dated April 19th, 1858.

LA FAYETTE PARKER, *Referee.*

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PL'FFS,
against
EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS.

This action this day having been brought on to trial, and it appearing to the court now here that this action is brought to enforce a mechanic's lien; that the summons and complaint in this action have been duly served; that no answer or demurrer to said complaint has been received by
650 the plaintiffs' attorneys; that the time for the service of an answer or demurrer has expired; that this action has heretofore been referred to La Fayette Parker, clerk of this court, to take the proofs in this action and to compute and ascertain the amount due the plaintiffs in this action; that said clerk has taken the proofs and ascertained the amount due plaintiffs; that said clerk has filed the report of the same, whereby it appears that the sum of five hundred and sixty-six dollars and thirty-four cents and interest thereon from the second day of December, 1857, is due and unpaid to the plaintiffs upon the claim and demand stated in the complaint in this action; that the materials and goods, work, and labor named in said complaint in this action were furnished, done, and delivered as alleged in said complaint and for the purposes therein mentioned, and that the demand set forth in said complaint is a lien on said premises described in said complaint, and that the same is a prior lien to the lien claimed by the defendant, Isaac Taylor, and that such lien commenced as alleged in said complaint. And it appearing to this court that the premises described in the petition on file and the complaint in this action cannot be sold in parcels without injury to the interest of the parties; that no part of said
651 pre nises can be separated from the residue and sold without damage to the whole.

And on motion of Strong & Fuller, attorneys for plaintiffs, the court now here, order, adjudge, and decree that the said report of the said La Fayette Parker, on file in this action, be and the same is hereby ratified and confirmed; that the said plaintiffs, Stephen Wiltse & Peter Hetrick, do recover of said defendant, Eugene Howland, the sum of five hundred and sixty-six dollars and thirty-four cents damages, with interest thereon from the second day of December, A. D. 1857, with the costs and disbursements in this action to be adjusted and taxed. And the court further order and adjudge that the above-named sum, interest, and costs to be adjusted be, and the same hereby is, adjudged and decreed to be a lien upon the building described in the petition on file in this action, and upon all the right, title, and interest of said defendant, Eugene Howland, in and to the land and premises set forth and described in said petition and complaint on file in this action, at the time of the performing of the labor, furnishing and delivering of the material named and described in said complaint for said building as described in said petition for said lien in this action; and it is further ordered and adjudged that said damages, costs, and disbursements
652 be levied and made out of the said building, and the said right, title, and interest of the said defendant, Eugene Howland, of, in, and to the said lands and premises described and set forth in said complaint in this action. And the court now here order and adjudge judgement in favor of the said plaintiffs and against the said defend-

ant, Eugene Howland, and for said lien, in accordance with the foregoing judging and judgement of this court.

By the court.

J. M. KEEP.

Racine, April 23rd, 1858.

Filed Ap'l 23rd, 1858.

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PL'FFS, *against* EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS. } Judgement.

It is hereby ordered and adjudged that the above-named plaintiffs do recover against the said defendant, Eugene Howland, the sum of five hundred and sixty-six dollars and thirty-four cents damages, and interest thereon from the second day of December, A. D. 1857, together with
653 costs and disbursements of this action adjusted and taxed at the sum of thirty-eight dollars and twenty-seven cents, which damages, interest, and costs amount to the sum of six hundred and twenty dollars and thirteen cents; that the same is a lien upon the brick building standing on all that certain piece or parcel of land, situated and being in the city of Racine, county of Racine, and State of Wisconsin, known and described as follows, to wit: Lot number twelve (12), block number eighteen (18), as the same is marked and described in the original plot of the village of Racine made by Moses Vilas, and recorded in the register's office of Racine County, and also upon all the right, title, and interest of the defendant, Eugene Howland, of, in, and to the above-described piece of land, from and after the 27th day of March, A. D. 1857, and that said brick building, and the interest aforesaid of said Howland in the above-described premises, be sold for the same to law in such cases provided, and that said defendant, Isaac Taylor, have the right to redeem the same at any time prior to the sale thereof.

Dated Ap'l 23rd, 1858.

LA FAYETTE PARKER, *Clerk.*

Filed Ap'l 23rd, 1858.

L. F. PARKER, *Clerk.*

Entered. See judgement book A, page 496.

654 The State of Wisconsin to the sheriff of the county of Racine, greeting:

Whereas judgment was rendered on the twenty-third day of April, in the year one thousand eight hundred and fifty-eight, in an action to enforce a mechanic's lien on certain premises, in the circuit court for the county of Racine and State of Wisconsin, between Stephen Wiltse and Peter Hetrick, plaintiffs, and Eugene Howland and Isaac Taylor, defendants, in favor of the said Stephen Wiltse and Peter Hetrick against said Eugene Howland and Isaac Taylor, to enforce a mechanic's lien, and personally the said Eugene Howland, for the sum of five hundred sixty-six and $\frac{34}{100}$ dollars damages, and interest thereon from the second day of *of* December, 1857, and thirty-eight dollars and twenty-seven cents costs, as appears by the judgment-roll on file in the office of the clerk of the circuit court for the county of Racine; and whereas said judgement was docketed in your county on the twenty-third day of April, one thou-

sand eight hundred and fifty-eight, and the sum of six hundred twenty and $\frac{13}{100}$ dollars, with the interest there*from* from the twenty-third day of April, one thousand eight hundred and fifty-eight, is now actually due thereon:

Therefore we command you that you satisfy the said judgement
655 out of the property described in said judgment, and, if that prove insufficient, then out of the property of the said Eugene Howland in your county, or, if sufficient personal property cannot be found, then out of the real property in your county belonging to the said Eugene Howland on the day when the said judgment was so docketed in your county, or any time thereafter, in whose hands soever the same may be, and return this execution within sixty days after its receipt by you to the clerk of the circuit court, county of Racine.

Witness, Hon. David Noggle, circuit judge of the 1st judicial circuit, the fourth day of April, in the year one thousand eight hundred and fifty-nine.

STRONG & FULLER,
Att'ys for Plaintiffs.

To the sheriff of Racine County, in the State of Wisconsin:

You are hereby directed to levy this execution, and to sell the brick building standing on all that certain piece or parcel of land situated and being in the city of Racine, county of Racine, State of Wisconsin, known and described as follows, to wit: Lot number twelve (12), block number eighteen (18), as the same is marked and designated on the original plot of the village of Racine made by Moses Vilas, and on record in the office of register of deeds in & for said county of Racine, and also
656 all the right, title, and interest of the defendant, Eugene Howland, of, in, and to the above-described piece of land, on the 27th day of March, A. D. 1857.

Racine, 4th April, 1859.

STRONG & FULLER,
Pl'ffs' Att'ys.

To the sheriff of Racine County:

Levy, as within directed, the sum of $620.13, and interest from 23rd Ap'l, 1858, besides your own fees.

STRONG & FULLER, *Attorneys.*

Filed June 2nd, 1859.

S. F. PARKER, *Clerk.*

The within execution is hereby returned unsatisfied, by order of the defendant and by consent of the plaintiffs' attorneys, this 4th day of June, 1859.

W'M G. EVIRET, *Sheriff,*
By H. T. TAYLOR, *Under.*

My fees to be paid by L. S. Blake.

Received April 4th, 1859, at 1½ o'clock p. m.

By virtue of the within-annexed execution, I levied upon the brick building standing on all that certain piece or parcel of land situated and being in the city of Racine, county of Racine, and State of Wisconsin, known and described as follows, to wit: Lot number twelve (12), in block number eighteen (18), as the same is marked and designated on the

original plot of the village of Racine made by Moses Vilas, and
657 recorded in the office of register of deeds in and for said county of Racine, and also all the right, title, and interest of the defendant, Eugene Howland, of, in, and to the above-described piece of land, on the 27th day of March, A. D. 1857, this 4th day of April, A. D. 1859.

The State of Wisconsin to the sheriff of the county of Racine, greeting:

Whereas judgment was rendered on the twenty-third day of April, one thousand eight hundred and fifty-eight, in an action to enforce a mechanic's lien on certain premises, in the circuit court for the county of Racine, State of Wisconsin, between Stephen Wiltse and Peter Hetrick, plaintiffs, and Eugene Howland and Isaac Taylor, defendants, in favor of the said Stephen Wiltse and Peter Hetrick against said Eugene Howland and Isaac Taylor, to enforce a mechanic's lien, and personally the said Eugene Howland, for the sum of five hundred sixty-six and $\frac{34}{100}$ dollars damages and forty-three dollars and fifteen cents costs, as appears by the judgment-roll on file in the office of the clerk of the circuit court for the county of Racine; and whereas said judgment was docketed in your county on the twenty-third day of April, one thousand eight hundred and fifty-eight, and the sum of six hundred nine
658 and $\frac{49}{100}$ dollars, with interest thereon from the twenty-third day of April, one thousand eight hundred and fifty-eight, is now actually due thereon:

Therefore, we command you that you satisfy the said judgement out of the property described in said judgement, and if that prove insufficient, then out of the personal property of said Eugene Howland in your county, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the said Eugene Howland on the day when the said judgement was so docketed in your county or any time thereafter, in whose hands soever the same may be, and return this execution within sixty days after its receipt by you to the clerk of the circuit court, county of Racine.

Witness Hon. David Noggle, circuit judge of the first judicial circuit, the twenty-first day of September, one thousand eight hundred and fifty-nine.

STRONG & FULLER,
Att'ys for Plaintiffs.

[SEAL CIR. COURT.] L. F. PARKER, *Clerk.*

To the sheriff of Racine County, State of Wisconsin:

You are hereby directed to levy this execution and sell.

659 *Order confirming sale.*

STATE OF WISCONSIN:

Circuit court for the county of Racine.

STEPHEN WILTSE & PETER HETRICK, PLAINTIFFS, *ag't* EUGENE HOWLAND & ISAAC TAYLOR, DEF'TS. } Order confirming sale in suit to enforce mechanic's lien.

Before the circuit court in and for the county of Racine, in the State of Wisconsin.

On reading and filing the report of sale in above-entitled action, made by William G. Everit, sheriff of Racine County, in the State of Wisconsin, bearing date the 22nd day of May, A. D. 1860, and it appearing to this court that said sale was regularly made according to law, the rules of this court, and the provisions of the judgment entered in said action, and on motion of Strong & Fuller, attorneys for the plaintiffs in said action, it is hereby ordered, adjudged, and decreed that the said report of the sale and the sale of the premises as described in said report of sale be, and the same hereby are, ratified and confirmed.

Dated this 8th day of August, A. D. 1860.

By the court.

DAVID NOGGLE, *Judge.*

Filed Aug. 8, 1860.

L. F. PARKER, *Clerk.*

660 Racine circuit court.

STEPHEN WILTSE & PETER HETRICK } *against* EUGENE HOWLAND & ISAAC TAYLOR. }

STATE OF WISCONSIN,
Racine County, ss:

Marshall M. Strong, of said county, being duly sworn, says that he is one of the attorneys for the plaintiffs in the above-entitled action; that there has been necessarily disbursed for postage in said action twenty-four cents, as appears from their register.

MARSHALL M. STRONG.

Subscribed and sworn to before me this 10th day of April, A. D. 1858.

[SEAL.] WILLIAM E. STRONG,
Notary Public.

Filed April 10, 1858.

STATE OF WISCONSIN,
Circuit Court, Racine County, ss:

I, Charles S. Chipman, clerk of said court, do hereby certify that I have compared the hereto annexed with the original judgement-roll, and all papers in the action therein entitled on file in my office, and that the same is a true and correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of said court this 8th day of July, 1874.

[SEAL.] CHARLES S. CHIPMAN, *Clerk.*

661 *Def'ts' Exhibit No.* 10.—*Edw. Kurtz, exam'r.*

Deed from I. Taylor & W. to Blake & Elliott.

This indenture, made this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-three, between Isaac Taylor and Emerline Taylor, his wife, of the city and county of Racine, in the State of Wisconsin, party of the first part, and Lucius S. Blake and James T. Elliott, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these

presents do grant, bargain, sell, alien, convey, and confirm unto the said party of the second part, their heirs and assigns, forever, all those certain pieces or parcels of land situated in the first ward of the city of Racine, county of Racine, and State of Wisconsin, known and described as follows, to wit: Lot number twelve (12), in block number eighteen (18), as the same is marked on the original plat of the village of Racine, made by Moses Vilas, surveyor, and now on record in the office of register of deeds in and for said county of Racine. Also, the north ten (10) feet of lot number four (4), in said block number eighteen (18), being a
662 strip of land ten (10) feet wide, off the northerly side of said lot four (4), and extending the whole length of said lot four (4), east and west. Also, all the benefits, rights, and privileges contained in a certain agreement executed by one Charles Clement to said Isaac Taylor, and recorded in volume 43 of deeds, on page 56, in the office of said register of deeds, hereby expressly reserving and excepting from the above-described premises all the rights, privileges, and easements conveyed by said Isaac Taylor and wife to said Charles Clement, by deed recorded in the office of said register of deeds, in volume 43 of deeds, on pages 54 & 55, together with all and singular the hereditaments and appurtenances thereto in anywise appertaining, and all the estate, right, title, possession, claim, and demand, in law or in equity, of the said party of the first part therein and thereto:

To have and to hold the same unto the said party of the second part, their heirs and assigns, to their sole use, forever. And the said Isaac Taylor, of the party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant with the said party of the second part, their heirs, executors, administrators, and assigns, that at the time of the delivery of these presents he is well seized of the above-granted premises as of an indefeasable estate of inheritance in fee-simple; that the same are free and clear from all liens and incum-
663 brances whatever; and that in the quiet and peaceable possession and enjoyment of the said party of the second part, their heirs and assigns, forever, against all persons lawfully claiming the same, or any part thereof, he will warrant and forever defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

I. TAYLOR. [L. S.]
EMERLINE TAYLOR. [L. S.]

Signed, sealed, and delivered in presence of—
W. J. DURHAM,
LOIS R. MARSHALL.

[2 5-cent int. reve. stamps cancelled.]

STATE OF WISCONSIN,
County of Racine, ss:

On the 18th day of April, 1863, came personally before the subscriber, a notary public in and for said county, Isaac Taylor and Emerline Taylor, his wife, to me well known to be the persons described in and who executed the above conveyance, and acknowledged that they had executed the same, and for the uses and purposes therein set forth.

Given under my hand and official seal this 18th day of April, 1863.

[SEAL.] WARREN J. DURHAM,
Notary Public.

(Endorsed:)
REGISTER'S OFFICE,
Racine County, Wis., ss:

Rec'd for record April 20th, A. D. 1863, at 10 o'clock a. m., and recorded in vol. "43" of deeds, on page 486.

WILLIAM J. SHEPHERD,
Register of Deeds.

664 *Def'ts' Exhibit No.* 11.—*Edw. Kurtz, examiner in chancery.*

$750.]
Eighteen months from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.
Racine, April 18th, 1863.

L. S. BLAKE.
JAMES T. ELLIOTT.

(Written across the face): Paid in full to L. S. Blake, Jan'y 16th, 1865, by check.

$750.]
Thirty months after date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars.
Racine, April 18th, 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face): Paid in full, Nov. 23rd, 1866. Check, National Bank.

$750.]
Two years from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.
Racine, April 18th, A. D. 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face): Paid in full.
(Endorsed on back): Paid by B. & E.

665 $750.
Three years from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.
Racine, April 18th, 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face:) Paid in full.
(Endorsed on back:) Paid by B. & E.

$750.
Forty-two months from date I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually, value received.
Racine, April 18th, 1863.

L. S. BLAKE.
JAMES T. ELLIOTT.

(Written across the face:) November 19th, 1863. Paid by check. $1,332.75 for the 2 notes.

$750.

Four years from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.

Racine, April 18th, 1863.

L. S. BLAKE.
JAMES T. ELLIOTT.

(Wri ten across the face:) November 19th, 1863. Paid by check.

$750.

666 Six months from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest.

Racine, April 18th, 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face:) Paid in full, July 27th, 1863.

(Endorsed on back:) Blake & Elliott to Isaac Taylor.

NOTES.—Rec'd, July 24, '63, five hundred dollars on this note.

$500. I. TAYLOR, K.

$750.

One year from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest.

Racine, April 18th, 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face:) Paid in full, by check, July 27th, 1863.

$750.

Fifty-four months from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.

Racine, April 18th, A. D. 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face:) Nov. 23rd. Paid in full. 1863.

$750.

667 Five years from date, for value received, I promise to pay to Isaac Taylor, or bearer, seven hundred and fifty dollars, with interest annually.

Racine, April 18th, 1863.

L. S. BLAKE. (Erased.)
JAMES T. ELLIOTT. (Erased.)

(Written across the face:) November 23. Paid in full. 1863.

Def'ts' Exhibit 12.—*Edw. Kurtz, examiner in ch'y.*

Statement of taxes.

Tax of 1859 on lot 12, block 18, first ward,	valuation $10,500,	tax	$185 35
" " 1860	valuation $10,500,	"	142 96
" " 1861	" 8,500,	"	95 58
" " 1862	" 8,500,	"	134 05
" " 1863	" 7,000,	"	72 28

Tax of 1864		valuation	7,000,	tax	139 30
" " 1864, volunteer		"	7,000,	"	113 40
" " 1865, "		"	7,000,	"	46 20
" " " city		"	8,000,	"	179 20
" " 1866, "		"	8,000,	"	183 60
" " 1867, "		"	8,000,	"	194 80
" " " special		"	8,000,	"	105 60
" " 1868, city		"	9,500,	"	371 37
" " 1869, "		"	13,000,	"	203 59
" " 1870, city & specials		"	13,000,	"	499 20
" " 1871, " & special		"	13,000,	"	273 52
" " 1872, " "		"	13,000,	"	345 61
" " 1873, " "		"	13,000,	"	376 87

668 Deed from Throup & Howland to I. Taylor.

This indenture, made this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-two, between Martin B. Throup and Melisa E., his wife, of the city and county of Racine, in the State of Wisconsin, and Eugene Howland, by Richmond Howland, his attorney, parties of the first part, and Isaac Taylor, of said city of Racine, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of ten dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quit-claimed, and by these presents do remise, release, convey, and quit-claim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following described lot, piece, or parcel of land, to wit, the north ten (10) feet of lot number four (4), in block number eighteen (18), in the first ward of the said city of Racine, being a strip of land ten feet wide off the northerly side of said lot four (4), and extending the whole length of said lot east and west:

669 To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said part' of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

M. THROUP. [SEAL.]
MRS. M. THROUP. [SEAL.]
EUGENE HOWLAND, [SEAL.]
By his attorney, R. W. HOWLAND.

Signed, sealed, and delivered in the presence of—
ELIPHALET CRAM.
ALBERT G. KNIGHT.

STATE OF WISCONSIN,
County of Racine, ss:

On this eleventh day of March, A. D. 1862, came personally before the subscriber, a notary public, residing in said county, Martin B.

Throup and Melissa E., his wife, & Richmond W. Howland, to me well known to be the persons described in, and who executed, the above conveyance, and acknowledged that they had executed the same for the purposes therein set forth, and Richmond W. Howland, to me known to be the attorney of Eugene Howland, acknowledged the due execution of the foregoing deed as such attorney.

Given under my hand and notarial seal.

[SEAL.] ALBERT G. KNIGHT,
Notary Public.

670 Rec'd for record March 31, A. D. 1862, at 9 o'clock a. m.

STATE OF WISCONSIN,
County of Racine, ss:

I, William G. Hyde, register of deeds in and for Racine County, Wisconsin, do hereby certify that the annexed and foregoing copy of deed from Martin Throup & W. & Eugene Howland to Isaac Taylor is a true and perfect copy of the original of record in my office, as recorded in volume 42 of deeds, on page 301; that I have compared the same with said original, and hereby certify that the annexed and foregoing is a full, complete, and perfect copy of said original, and of the whole thereof.

Given under my hand and official seal this seventeenth day of April, A. D. 1874, at the city of Racine, county and State aforesaid.

[SEAL.] WILLIAM G. HYDE,
Register of Deeds, Racine County.

671 And afterwards, to wit, on the twenty-ninth day of October said term, to wit, on the sixteenth day of November, A. D. 1874, the following proceedings were had, to wit:

Decree of dismissal.

EUGENE HOWLAND
vs.
LUCIUS S. BLAKE & JAMES T. ELLIOTT. } In equity.

This day came the parties, by their counsel, and on consideration of this cause and the arguments of counsel thereon, it is ordered, adjudged, and decreed by the court that the complainant's bill of complaint be and hereby is dismissed, and that the complainant pay the costs in this cause to be taxed within ten days, or in default thereof that an execution be issued against him for the same.

And came the complainant, by his counsel, and in open court prayed an appeal to the Supreme Court of the United States.

Whereupon it is ordered by the court that said appeal be and hereby is allowed, and that said complainant give bond in the sum of seven hundred and fifty dollars, with sureties to be approved, conditioned to pay the costs of this court and of said appeal.

672 JANUARY 13, 1875.—This day came the complainant, by his solicitors, and filed the bond of Richmond W. Howland, Albert G. Knight, and Clark C. Briggs, all of the city of Racine, in the State of Wisconsin, in the sum of seven hundred and fifty dollars, conditioned that the said complainant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good; which bond is approved by the circuit judge, and is as follows:

Bond on appeal.

Know all men by these presents that we, Richmond W. Howland, Albert G. Knight, and C. C. Briggs, of Racine, in the State of Wisconsin, are held and firmly bound unto Lucius S. Blake and James T. Elliott, of Racine aforesaid, in the full and just sum of seven hundred and fifty dollars ($750), to be paid to the said Lucius S. Blake and James T. Elliott, or to their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this ninth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a term of the circuit court of the United
673 States for the eastern district of Wisconsin, in a suit depending in said court between Eugene Howland, complainant, and the said Lucius S. Blake and James T. Elliott, defendants, a decree was rendered against the said complainant, and in favor of the said defendants, dismissing the said complainant's bill of complaint, and the said Eugene Howland having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Lucius S. Blake and James T. Elliott, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said Eugene Howland shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

RICHMOND W. HOWLAND. [L. S.]
ALBERT G. KNIGHT. [L. S.]
CLARK C. BRIGGS. [L. S.]

Sealed and delivered in presence of—

STATE OF WISCONSIN,
Racine County, ss:

Albert G. Knight and C. C. Briggs, being severally duly sworn, depose and say, and each for himself says, that he is one of the
674 persons named in and who executed the foregoing bond, and that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities in property not by law exempt from execution.

ALBERT G. KNIGHT.
CLARK C. BRIGGS.

Subscribed and sworn to before me this 9th day of January, A. D. 1875.

[SEAL.] JOHN W. KNIGHT,
Notary Public.

Approved by—

THOMAS DRUMMOND.

Whereupon a citation issued.

675 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I

have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being, with Exhibit No. 15, a small account-book accompanying this transcript separately, a full and complete copy of the record and proceedings in the suit of Eugene Howland vs. Lucius S. Blake & James T. Elliott, in equity.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 27th day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the 100th.

[SEAL.] EDWARD KURTZ, *Clerk.*

676 The United States of America to Lucius S. Blake and James T. Elliott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein Eugene Howland is appellant, and you are appellees, to show cause, if any there be, why the decree passed against the said Eugene Howland should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, circuit judge of the United States for the seventh judicial circuit, at the city of Milwaukee, this 13th day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth.

THOMAS DRUMMOND,
Circuit Judge.

We accept service of above citation this tenth day of July, A. D. 1875.

FISH & LEE,
Solicitors for Appellees.

(Indorsement on cover:) No. 289. Eugene Howland, appellant, vs. Lucius S. Blake and James T. Elliott. E. Wisconsin C. C. U. S. Filed 25th October, 1875.

EXHIBIT No. 15.

Howland Block Account-Book, 1863.

6 mos. ¼, 1666, 333, 2-8. Filed August 20, 1874. Edw. Kurtz, clerk.

[NOTE BY PRINTER.—The black-letter type is used for all matter written with lead-pencil in the following accounts.]

1, 2 *D'r* — *Howland Block in Account with Blake & Elliott.* — *C'r.*

1863. Up to April	21	I. Taylor, for rent received by him	$27 40	1863. April	18	1st payment on purchase	C'r. $2,500
June	30	John Tapley, in bank	50	"	19	Making papers & stamps to Strong & Fuller	6 80
July	1st	B. F. Weeks } in bank. July 6th	75	"	21	Recording deed	80
July	1	A. O. Burch & Co. }	82 50	May	13	E. Smith, for transfur & stamp of insurance policys	2 50
July	1	Lyon & Adams }	25	"	"	Window-stops for McDonald's office	25
June	7	Masonic society }	50	"	"	" & Clark's work	38
			232 50	"	16	2 lbs. spikes for sidewalk	14
July	1	A. Sanford, check	33 25	"	26	Cutting stovepipe hole in treasurer's office	1
"	"	" bill for printing	16 75	June	5	Gass to council-room	1 70
"	"	C. W. Bennett } in bank. July 24	28 12	"	"	Work on door & office of Paine & Millet	50
"	"	Paine & Millet }	31 25	"	"	White-washing on outside	1 25
			57 87	April	20	Discount on note 90 days	42 61
Oct.	1st	John Tapley, in bank	50	July	22	" " " 4 months	59 74
"	"	John Adams, in b'k	25	"	24	Check to I. Taylor	500
"	"	B. F. Weeks, in bill of goods	75				$3,117 67
"	"	Masonic society	50				

3

			D'r.	4			C'r.
1863 Up to Oct.	1st	C. W. Bennett	28 12	1863.		B't over	$3,117 67
"	1	Paine & Millet	31 25	July	27	Check to I. Taylor	1,005 87
Up to July	1st	1864, McDonald, in county orders	74	Aug.		Lumber & work on roof	5
		McDonald, on rent, 1864, in county orders	6			Paid Mainland	24
Dec.	7	Masonic society	50	Sept.	12	Paid Sq'r Janes for rep. rods	3
"	30	John Tapley, for post-office	50			Paid on 2 notes to Taylor	1,442 91
1864.				Oct.	29	Insurance	100
Jan'y	1	A. O. Burch & Co.'s & bill $59 15	15 78	Nov.	19	Paid 2 not's I. Taylor	1,332 75
"	1	B. F. Weeks	58 75	"	23	" 2 " error above	26 37
		" bill	16 25	"	23	" 2 " to I. Taylor	1,375 69
"	1	Paine & Millet	31 25	Dec.	24	" Taxes	72 28
"	1	Lyon & Adams	25	1864.			
				Feb'y	17	B. Halenbake	8
				May	7	Hoisting-rope	12 50
				June	15	Menzo Newber	288 30

D'r — *Hoxland Block in Account with Blake & Elliot,* — C'r

March 7	Masonic society	50		" "	Carpenter-work	20
April 1	John Tapley	50		" "	Lumber & nails	20
" 1	A. O. Burch & Co	95 50			Hauling gavell	10
" 1	C. W. Bennett, 2 quarters	56 24		July 11	L. James	2
" 1	A. C. Sanford	50				$8,876 34
" 1	Paine & Millett	31 25		6	B't over	8,876 34
5	B't over.			Aug 12	Dig'ing drain	5
					Repairing pa'tition Advoctal office	25
Rent up to 1864.					**Lumber**	**10**
April 1	B. F. Weeks	$75		Dec. 7	Rep. masonic soci'ty	50
July 1	A. O. Burch & Co	95 50			Isaac Taylor	750
" 1	B. F. Weeks	75		1865.		
" 1	Lyon & Adams	50		Jan'y	Chimney	5
" 1	Paine & Millet	31 25			New sidewalk	50
June 7	Masonic society	50			Gas fixtures	5
Sept. 7	Masonic society	50			Iron shutter	18 80
Oct. 1	Post-office	50			New window	**15**
" 1	A. C. Sanford	50		Dec 1, '65	Wood-house in council-room	10 00
" 1	A. O. Burch & Co	95 50				
" 1	Paine & Millet	31 25				
" 1	John B. Adams, in wood	25				
" 1	B. F. Weeks	75				
1865.						
Jan'y 1	B. F. Weeks	75				
" 1	D. McDonold, in county orders	69				
" 1	City council, " city scrip	80				
1864.						
Dec. 7	Masonic society, in repairs	50				

EXHIBIT No. 15—Continued.

7	Paid		B't over.		
	up to—1865.				
Jan'y		1	John Tapley		50
"		1	Adams & Hand, in wood		25
"		1	Paine & Millet		31 25
"		1	A. C. Sandford		50
April		1	John Talpey		50
"		1	A. O. Burch & Co		11 15
			do bill		84 35
"		1	A. C. Sandford, check		42 25
"		"	bill		7 75
March		7	Masonic society		50 00
April		1	Paine & Millet, (May 26)		31 24
April		1	B. T. Weeks		75
July		1st	John Tapley		50
		1	B. T. Weeks		75
		1	A. C. Sandford	42 50	
		"	Bills	7 50	
					50
		1	John B. Adams		50
8	1865. Up to				
Sept.		7	Masonic society		50
Oct.		1	John Tapley		50
"			B. F. Weeks		42 64
"		1	John Adams		25
"		1	A. C. Sandford	42 50	
"		1	Bill	7 50	
					50
Nov.		20			7 50
"		1	Paine & Millet		62 50
	1866.				
Jan'y		1	D. McDonold, county order		75
		1	A. O. Burch & Co		98
			" bill		
		1	Paine & Millet (Feb'y 20)		31 25
		1	A. C. Sandford		50
		1	John Tapley		50
April		1	John Tapley		50 25
March		7	Masonic society		50
April		1	John Beck		87 50
"		1	6 John Adams		50
9	July	23	A. C. Sanford		50 00
	April		Paine & Millet		31 25
Sept.		7	Masonic society		50
Oct.		1	A. C. Sandford		50
April		1	Paine & Millett		31 25
Oct.		1	Hubicheck		100
Oct.	1,	'66	J. B. Adams (in bank)		50
Dec.		8	A. O. Burch, 1 year's rent of store on [illegible]		425
Jan'y		1	Tapley		50
"		1	Paine & Millet, note, 60 days		81 25
		12	F. Hubicheck		
			A. C. Sandford		
			D. McDonold		
			City Racine		
10					
	1867.				
April		1	John Adams (in b'k)		25
"		1	Masons, "		50
		1	A. O. Burch & Co, cash (in b'k)		65 32
		1	" bill goods		40 93
		1	Hubicheck (b'k)		100
July		1	Hubeck		100
		"	Masons		50
		"	A. C. Sandford		75
		"	John Adams		25
		"	J. Tapley		50
		"	A. O. Burch		15 25
		"	" bill to bal		
		"	C. W. Bennett		17 50
		"	" blind		12 50
		"	Paine & Millet, cash		46
		"	" " taking test'ony		37 50
		"	A. C. Sandford		18 50
		"	" bill		6 50
11					
	1867.				
Oct.			Masons		50
			John Tapley		50
Oct.		1	F. Hubicheck		100
		1	A. O. Burch & Co., bill		106 25
		1	John B. Adams		25

EXHIBIT No. 15—Continued.

		A. C. Sandford	50
1868.			
Jan'y	1	F. Hubicheck	100
	"	D. McDonold, paid on tax	72 70
	"	Masons	50
	"	A. C. Sandford	34 50
	"	" bill	15 50
	"	A. O. Burch & Co., bill	106 25
	"	J. B. Adams	25
	"	Paine & Millet	37 50
April	1	Masonic society	50
	"	John Tapley	50
	"	Paine & Millet	37 50
	"	Hubicheck	100
12			
Jn'y 13,'68		Rooms over post-office rented to H. Warner at 9.33 1-2 dollars per month, payable in advance	
J'y 13, '68		Rec'd	10
Feb'y	12	Cash	8 67
June 16,'68		Cash	10 00
July 3, '68		"	10 00
Nov.	1, '68	Republic Insurance Co., S. C. Yont, agent	
	Nov. 1,'68	Office-rent 125 per year, payable quarterly	
13	1868.		
	July 1	Masonic	50
		J. Tapley	50
		F. Hubicheck	100
		A. O. Burch & Co., (2 quarter)	196 85
		" bill	15 65
		John Adams	25
		Paine & Millet	37 50
Up to Oct.	1	E. O. Hand	25
	"	A. C. Sandford,	82 35
	"	" bill } 3 quarters 150 00	67 65
	"	A. O. Burch & Co	80 35
	"	" bill	25 90
	"	John Tapley	50
Up to Sept.	7	Masons	50
Up to Jan'y	1	Paine & Millet (60-day note)	75
Up to Oct.	1	F. Hubecheck, bill	34 50
		" cash	65 50
Jan'y	1	McDonold, 60 orders	75 00
14 Dec 3'68		Council-room, paid tax for 1868	80 00
J'n'y 4,'69		Cash of Hubecheck	59 75
To Jan'y	1st	%	46 25
	1869.		
April	1	Hubechick 96, Charles Bruce 4	100
"		S. C. Yont	31 25
"		Paine & Millett's note, 30 days	37 50
"		A. C. Sanford	
"		% " " 29 43	
"		Note, 30 days 70 57	
			100 00
"		Burch & Bruce	
"		% 12 81	
"		Check 93 44	
			106 25
"		A. O. Hont	25 00
15	1869.		
April	1	Masons, in bank	
Up to July	1, '69	H. Griswold, 2 mont's rent from May 1	16 61
"		Post-office, May 1, 2 mont's	33 50
"		Painting 10, cash 23 51	
"		Hubecheck	100
"		S. C. Yont	31 25
"		Burch & Bruce	
"		Bill 11.80, check 94.45	106 25
"		P. O. Tapley, rent (P. O.)	16 50
"		E. O. Hand	25 00
"		Payn & Millitt	37 50
"		A. C. Sanford, 30 days	50 00
	July 1st	Masonic society	68 75
1	Oct. 1,'69	Payne & Millit	37 50
	"	Utley, post-office	50 00
	"	H. Griswold	25 00
	"	Burch & Bruce	
	"	Bill 13 40	
	"	Cash 92 85	
			106 25

EXHIBIT No. 15—Continued.

	"		F. Hubecheck, cash	78 60
	"		Bills for goods	21 40
	"		Masons	68 75
	"		A. C. Sandford	50
	"		E. O. Hand	25
	1870.			
Jan'y		1	A. C. Sandford	29
			" bill	25
			Republic	31 25
			Hubechick, **bill & cash**	100
			Masons	68 75
			H. Griswold	25
			Post-office	50
17	1870.			
	Jan'y	1	Paine & Millett	37 50
	"	1	A. O. Burch & Co	106 25
	"	1	E. O. Hand	25
April		1	Utley & Griswold	75
		1	Masons 53.75, & Republic 31.25	85
		1	F. Hubecheck, bill	19
		"	" cash	81
		1	A. O. Burch, check	69 47
		"	" bill	36 78
July	2, '70		Cash of Griswold	25 00
"			Utley, P. office	50 00
				975
"			Paine & Millett	75 00
"			Yout & Clark	31 25
"			Hubercheck (bill 23.50)	100
"			Lodge room	68 75
"			A. O. Burch & Co., cash	28 18
"			" bill	76 07
18	1870.			
	Oct.	1st	Post-office	50
	"		Griswold	25
	"		Hubecheck	100
	"		Lodge	68 70
	"		Yout, office	31 25
	"		Burch & Co.	
	"		B. & E. % 20 84	
			Cash 85 41	
				106 25
	1871.			
Jan'y		1	M'r Hamilton	72
			Order, 44.00.	
			Check, 28.00.	
"			Post-office	50
"			Council-room	80
"			Griswold	25
"			F. Hubecheck	81
"			" bills	19
"			**Masons**	68 75
"			A. C. Sandford, note 95 60, for 3 quarters	150
	"		Paine & Millet, note	75
19	1871.			
	April	1	Post-office	20
	"		Burch & Bruce, 2 q't's note	206 50
	"		H. Griswold	25
	"		Hubecheck	100
	"		Paine & Millet	37 50
July		1	Post-office	
			H. Griswold	25
July 8 up to last				
To April		1st	A. C. Sandford	50
July		1	S. C. Yout (in part)	25
"		"	" (in full)	2 50
July		1	F. Hubecheck, cash	78
"		"	" bill	22
		1	Masons, 2 quarters	137 50
Oct.		1	W. L. Utley	100
		1	**F. Hubecheck**	90 25
			" **L. S. B. bill**	9 75
		1	**A. C. Sandford**	92 50
			" **bill**	7 50
20	1871.		**Rent paid up to**	
Oct.		1	**Paine & Millet, 2 quarters, note**	75 00
"		1	**A. O. Burch & Co., note, 60 days**	85 30
"		"	**Accon't**	20 95
				106 25
"		1	**Masons**	68 75

SUPREME COURT OF THE UNITED STATES.

No. 289.

EUGENE HOWLAND,

Appellant,

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT,

Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

APPELLANT'S BRIEF.

L. S. DIXON,
Counsel for Appellant.

BURDICK & ARMITAGE, Printers, Milwaukee, Wis.

SUPREME COURT OF THE UNITED STATES.

No. 289.

EUGENE HOWLAND,

Appellant,

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT,

Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

APPELANT'S BRIEF.

The bill in this case, which was filed July 1st, 1873, is for the redemption of certain mortgaged premises situated in the city of Racine.

The case as claimed by the appellant in his bill, is as follows: On October 21, 1857, the appellant

borrowed of Isaac Taylor seven thousand dollars, to be repaid on the first day of January, 1860.

To secure the repayment of the money, with interest at the rate of ten per cent. per annum, the appellant executed to said Taylor a mortgage upon the following premises, viz: Lots 4 and 12 in block 18 in the 1st ward of the city of Racine.

After the execution of this mortgage, Taylor released said lot 4 from the lien of the mortgage and accepted the remainder of the mortgaged premises as his security.

At the time of giving the mortgage, the appellant was erecting a valuable building upon said lot 12, and borrowed said sum of seven thousand dollars, to be used in the completion of the building. The money was so used, and the entire cost of the construction of the building exceeded the sum of twenty-four thousand dollars.

Upon the completion of the building, the same was rented at an annual rent of upwards of $2,200.

Soon after the building was completed and leased, appellant entered into an agreement with Taylor, whereby he, Taylor, was to take possession of said building and mortgaged premises, and to receive the rents thereof, and to apply them to the payment of the interest upon the debt, and to the payment of the principal; and was to retain possession there-

of until the net proceeds of the rents should be sufficient to satisfy the mortgage debt.

In pursuance of this agreement, appellant surrendered and delivered the possession of the building and premises to Taylor, who entered into possession under and in pursuance of said agreement, and thereupon took and received the rents thereof, to be applied upon the mortgage debt in pursuance of said agreement.

On or about the 10th day of August, 1861, Taylor being in possession of the premises under said agreement, instituted a suit in the circuit court of the State of Wisconsin, for Racine county, for the foreclosure of his mortgage, claiming in his complaint that the amount due upon the mortgage was "about the sum of seven thousand dollars." Judgment of foreclosure and sale was rendered in said suit on the 26th day of February, 1862, for the sum of $9,070.02.

On the 19th of June, 1862, said lot 12, with the building thereon, then constituting the mortgaged premises, was sold under the judgment for $9,300.00 to said Taylor, to whom a sheriff's deed was thereupon executed.

After the commencement of the foreclosure suit, appellant entered into an agreement with Taylor, whereby he waived and agreed to forego all defence and delay in the prosecution of said suit, and to

waive and forego all right of appeal from the judgment to be rendered in the suit, and to allow Taylor to remain in possession of the premises, and whereby Taylor agreed to continue in possession, and to bid in the premises at the sheriff's sale; to take a conveyance thereof from the sheriff, and to hold the same, and the possession of the premises merely as security for the payment of the mortgage debt; to receive and apply the rents to the payment of the interest and principal of the debt, until the whole debt should be paid, and upon its full payment to re-convey the premises.

The suit was prosecuted to judgment, sale made and deed executed in pursuance of the last-mentioned agreement.

Taylor remained in possession, collected and applied the rents pursuant to the agreement, until on or about the 18th of April, 1863. A short time prior to this date, Taylor being in need of his money applied to appellant to procure some other person to advance the same to him, and to take a conveyance of the mortgaged premises as security for its repayment.

Appellant thereupon informed the appellees of the terms and conditions upon which Taylor held the premises, and requested them to take a conveyance from Taylor, and to hold the same upon the

terms and conditions upon which he then held them; which appellees promised to do.

On the 18th day of April, 1863, Taylor conveyed the premises to appellees by a conveyance absolute in form, but which was in fact, given as a mortgage.

At the time of making this conveyance an agreement was made between Taylor, appellant and appellees, whereby appellees agreed to pay Taylor the mortgage debt, and to take possession of the premises, receive the rents and apply them to the payment of the debt; to retain possession until the net proceeds of the rents should be sufficient to satisfy the debt; to keep and render to appellant a full and accurate account of the rents received by them, and to convey the premises to appellants when the receipts should be sufficient to reimburse them for the moneys paid on account of the mortgage debt, and on account of said premises, and whereby Taylor was to convey the premises to appellees, as the same were conveyed as above stated, and to deliver the possession thereof to appellees as security for the moneys so advanced by them.

In pursuance of the last mentioned agreement, the possession of the premises was delivered to appellees, who entered into possession under said agreement, and have received the rents from April 18, 1863, to the present time.

Appellees, from time to time, paid Taylor the mortage debt. They have received rents from the building amounting to about the sum of two thousand dollars per year, and the aggregate amount received greatly exceeds the mortgage debt with interest, and all money paid out by them for taxes, insurance and repairs. And the excess of such receipts, over and above the moneys paid out, with interest, is several thousand dollars.

Appellant has demanded an account from appellees of the moneys received and paid out by them; and that they convey to him the premises, in compliance with their agreement, which they have refused to do—pretending that they purchased the premises of Taylor absolutely, and that his conveyance to them was absolute, and not as security, and that they never agreed to convey the premises to appellant.

Appellant asks an accounting of the moneys paid out and received by appellees, and that he may be at liberty to redeem the mortgaged premises upon payment of what, if any thing, shall be found to be due appellees, which he offers to pay; and also asks that appellees may be decreed to pay him what, if any thing, shall be found to be due from them on such accounting; that they may be decreed to surrender the possession of the premises to him, free from all incumbrances placed

thereon by them, or by any one claiming under them; and that they may be ordered to acknowledge satisfaction of the mortgage debt, and to reconvey the premises to him.

The answer, *without oath* (answer under oath having been waived), denies all the equities of the bill.

By way of further answer it is admitted that the complainant held the legal title to the premises; but it is averred that he so held such legal title in trust for, and for the benefit of one Richmond W. Howland, a resident of Racine, and a citizen of Wisconsin; and that he so held the same upon some understanding or agreement with the said Richmond W. Howland, of the nature of which the defendants had no knowledge or information sufficient to form a belief. And it is averred that if a building was being erected as stated in the bill, the same was the property of and erected for the said Richmond W. Howland, and not the complainant or any other person.

Appellees also in further defence allege that on or about November 15, 1859, the city of Racine, by tax deed, conveyed said lot 12 to Taylor, for the city tax of 1855, and also conveyed the same to him for the tax of 1856; and that on the same day the State of Wisconsin and county of Racine, by tax deed, conveyed said lot to one Daniel P. Rhodes for

the state and county taxes of 1855; that on or about April 23, 1858, a judgment was recovered against appellants for the enforcement of a mechanic's lien upon said premises—such lien dating from March 27, 1857—and for the sale of said premises for the payment of the lien; and that on May 22, 1860, a sale was made in pursuance of the judgment for the sum of $1,000 to said Rhodes, to whom a sheriff's deed was executed; that on or about July 23, 1862, Rhodes conveyed to Taylor all his interest in said premises; that on said 18th day of April, 1863, Taylor held said premises and the legal and equitable estate therein, and was in possession thereof, wholly in his own right, and not otherwise, by virtue of the several conveyances above mentioned; and that upon said last mentioned day appellees purchased from Taylor, who conveyed to them said lot 12 for the sum of $10,000.00, of which sum they paid him at the same time $2,500.00, and the balance of $7,500.00 was secured to be paid him by the ten promissory notes of appellees for $750.00 each; one falling due at the end of six months from that date, and one at the end of each succeeding six months thereafter, and by a mortgage upon said lot 12; all of which notes appellees have paid; that they have no knowledge or information of any agreement or understanding whatever between Taylor and appellant, and had no notice of the

pretended agreement set forth in the bill, or of any agreement or understanding between Taylor and appellant, or any other person, relative to said premises other than as appears by the several conveyances above mentioned; that upon their purchase of the premises they entered into possession under claim of absolute title acquired by them, as above stated, from Taylor, exclusive of any other right, founding such claim upon their deed of conveyance from Taylor. And that ever since April 18, 1863, and for more than ten years next prior to the filing of the bill, they have continually occupied and possessed said premises under said deed of conveyance and claim of title, whereby they insist and allege that the appellant's alleged cause of action and claim to said premises are barred by the Statute of Limitations.

They further allege that neither appellant nor any other person has ever claimed or pretended until subsequently to the filing of the bill, that any understanding or agreement existed between appellees and appellant, whereby said premises were to be held by Taylor, or by appellees, or any other person, for appellant, or that the same were ever to be re-conveyed to appellant upon any terms or conditions whatsoever.

The general replication was filed, and the case

was tried upon the pleadings and proofs at the October term, 1874.

The trial resulted in a decree dismissing the bill, from which decree this appeal was taken.

The bill was dismissed upon the ground that it was incompetent, in the opinion of the circuit judge, to establish the claim of complainant in respect to the alleged agreement between him and Isaac Taylor, by parol evidence. (*See opinion of the circuit judge at the end of this brief.*)

The questions presented for the decision of this court are:

1st. The question of law, whether parol evidence is admissible to establish the alleged agreement between complainant and Taylor, and to establish the proposition claimed by us, that the title acquired by the sheriff's deed was defeasible and not absolute.

2d. The question of fact, whether the proofs are sufficient to establish the agreement under which it is claimed the property was bid in at the sheriff's sale.

3d. The question of fact whether the proofs are sufficient to establish the agreement under which it is claimed the appellees took the title and property from Taylor, or to establish the appellant's right of redemption as against the appellees' claim of title.

Any other questions which may arise will, we think, be controlled by the decision upon the main questions as above stated.

ASSIGNMENT OF ERRORS.

1st. The circuit court erred in holding and deciding that parol evidence was inadmissible and incompetent to establish the alleged agreement between complainant and Isaac Taglor.

2d. The circuit court erred in holding and deciding that parol evidence was inadmissible and incompetent to establish the appellant's claim that the title acquired by the sheriff's deed was defeasible and not absolute.

3d. The circuit court erred in holding and deciding that the evidence produced on behalf of the appellant was insufficient to establish the alleged agreement between appellant and Isaac Taylor, or to establish the appellant's claim that the title acquired by the sheriff's deed was defeasible and not absolute.

4th. The circuit court erred in declining to consider the proofs presented by appellant as to the alleged agreement under which appellees took the deed and property from Isaac Taylor.

5th. The circuit court erred in dismissing the bill, notwithstanding competent and sufficient proofs were presented on behalf of appellant to establish the alleged agreement between himself and Taylor, and also to establish the alleged agreement under which appellees took the deed and the property from Taylor, and to establish appellant's right to redeem as against the title claimed by appellees.

The decision of the court below turned upon the proposition maintained by that court that parol testimony was inadmissible to show any bargain or agreement between mortgagor and mortgagee made pending the foreclosure of the mortgage, and renewed and ratified at the time of the foreclosure sale, by which the mortgagee was to purchase the mortgaged premises at such sale for the amount due him for principal, interest and costs, and taking the sheriff's deed in the usual form, was to hold the same or the title thus obtained as security for the new debt thus contracted, or for the old debt, the form and nature of which had thus been changed by the foreclosure proceedings and the agreement of the parties in relation thereto. The considerations and motives which led to the agreement in this

case, and all the circumstances under which it was made, are fully disclosed by the pleadings and proofs, and it is certainly not claiming too much to say that the case of the complainant is one which appeals very strongly to the equitable interposition of the court in his behalf, unless, as held by the court below, this court is bound by a technical and inexorable rule of evidence, which forbids giving any effect to the agreement, but enables the defendants to take most unjust and unsconscionable advantage of it. The relation at that time existing between the parties to the agreement, the one being the mortgagee in possession of the mortgaged premises, and the other the mortgagor out, is not such as to favor any departure from the settled rules or principles governing the admissibility of parol evidence, the effect of which departure shall be to bring disadvantage and loss upon the mortgagor, and unjust gains and advantage to the mortgagee. Such being the relation between the parties, the law scans with a jealous eye all contracts and agreements entered into with the mortgagor respecting his equity of redemption, and by which such equity may be swallowed up or lost. It is only by an agreement shown in all respects to have been perfectly fair and honest on the part of the mortgagee that the equity of redemption will be held to have been released under such circumstances.

Russell v. Southard, 12 How. 139, 154.
Villa v. Rodriguez, 12 Wal. 323, 339.

Can it make any difference with the fairness and honesty of such an agreement, that is, any difference so far as the equitable rights of the mortgagor are concerned, that it is made under the pressure of a proceeding to foreclose the mortgage, and in consideration of the mortgagor's declining to appear or answer, or to delay the proceedings, or to take an appeal? Can it make any difference with the fairness and honesty of the agreement or of the mortgagee's conduct, that the release is to take the form of a deed by the sheriff under the foreclosure proceeding instead of being a conveyance directly from the mortgagor himself? Can these circumstances affect the quality of the transaction on the part of the mortagee, its honesty and fairness, or the admissibility of parol evidence to show that he has acted dishonestly and unfairly? Can the mortgagee, pending a proceeding to foreclose, and to gain some real or supposed advantage to himself therein, or to lull the mortgagor into a feeling of security and repose, enter into verbal stipulations, or make promises respecting the equity of redemption, that it shall not be surrendered or lost, which stipulation and promises he may afterwards repudiate or reject as alto-

gether worthless, while, if the same stipulations and promises had been entered into or made under any other circumstances and without suit pending, as for example, to obtain conveyance in form absolute from the mortgagor himself, they would have been binding and enforced to the very letter by the decree of a court of equity? Why is it that equity will freely receive and attentively listen to parol evidence of the mortgagee's promise or agreement in the latter case, and carefully and closely examine into, canvass and consider his conduct and all the surrounding circumstances so as to protect the helpless mortgagee, when it will not do so in the former? Why is it that equity will receive and examine such evidence to convert a deed absolute on its face into a mortgage upon a promise or agreement of the grantee to that effect, made when there exists between the parties no relation of trust and confidence like that of a mortgagee in possession to his mortgagor, and yet will refuse the petition of a mortgagor situated as the complainant in this case was? Why is it that a mortagee can perpetrate a fraud and obtain the equity of redemption by it under the particular circumstances of this case, when by the rules and practice of a court of equity he would not be permitted to do so in any other? The authorities indicate no distinction of this kind, and it is respectfully submitted that in reason and

justice none can exist. The foundation of the rule letting in parol evidence is the prevention of fraud by a party so situated that he can easily practice it and who may be under strong temptation to do so—by a party dealing with the necessities of another, and having him under his power and influence. The circumstances, no matter how numerous and multiplied, under which the fraud is perpetrated, or attempted to be, can make no difference with its detection and punishment. And especially should this be so where such circumstances as in the present case, aggravate rather than alleviate the fault of the party attempting the fraud—where they give him greater power and control over the other party, and enhance his own wrong by the unjust advantage which he seeks to gain by the exercise of such power and control. Omit from consideration the facts that a foreclosure suit was pending, and that the transfer of the mortgagor's equity of redemption was to come in the form of a deed from the sheriff, and suppose the equity of redemption was to come and had been transferred in any other way, as by a deed from the mortgagor himself, or from some third person holding the title in trust for the mortgagor, there can be no doubt that equity would have enforced the mortgagee's verbal agreement to re-convey on payment of the debt and interest. Such is the common case, which has been held over

and over again in the books. If upon surrender of the bond and mortgage here the mortgagor had conveyed to the mortgagee by deed, specifying as the consideration the sum due for principal and interest, parol evidence would have been admissible to show an agreement on the part of the mortgagee to hold in trust as security, and to re-convey on payment of the consideration named in the deed, with interest. Can it make any difference with the admissibility of such evidence that the agreement under consideration was made pending a foreclosure action, and that the form of conveyance agreed upon was to be some other than the deed of the mortgagor himself? It is submitted that it cannot. In either case the mortgagee obtains the mortgagor's equity of redemption upon a promise which it would be a gross fraud on his part to repudiate, and such fraud, regardless of the manner in which it was perpetrated, will not escape the scrutiny nor receive the sanction of a court of equity. In unraveling the transaction and restoring the parties to their original condition, no harm can by possibility be done to the mortgagee who gets his own with interest, whilst otherwise the mortgagor might be led on to his ruin and lose all through the wiles and deceptions of a crafty, over-reaching and unscrupulous mortagee and creditor. The decisions are, and with reason, too, that in whatever form ob-

tained upon agreement with the mortgagor, the mortgagee cannot retain the equity of redemption or deny the mortgagor's right where there appears the least taint of unfairness, fraud, or wrong or oppression on his part in procuring it. And where the mortgagee was in possession, the rule is that the burden is upon him to show that the transaction was fair and honest. It appears here not only that the mortgage was in possession, but also that the relations between the parties were in other respects confidential. In every light in which the case can be viewed there seems to be nothing which can, on principle, take it out of the general rule governing the admissibility of parol evidence of the dealings and transactions between mortagor and mortgagee touching the equity of redemption, and by which the mortagor's right may be affected or lost through fraud or unfairness on the part of the mortgagee. Neither does there seem to be anything which can, on principle, make the case an exception to the rule admitting parol evidence to show that a deed, or other conveyance absolute on its face, was intended to operate as a mortgage.

The learned judge of the circuit court seemed to look upon the evidence as tending in some way to impeach the foreclosure decree or to disprove its terms and effect. This clearly is not so, since the object and effect of the evidence is, not in any man-

ner to disturb the decree, but only by agreement of the parties to engraft upon the deed issued under it a parol condition of defeasance, which is precisely what is done in every case where parol evidence is admitted; and this, as will hereafter be seen, as readily and freely with respect to deeds executed upon judicial sales as to any others. The form of the deed or the source whence it comes is immaterial, as regards such admissibility, so long as the relation of debtor and creditor exists, or is intended to continue by agreement between the parties in interest.

And again, the learned judge below seemed to regard it as in some measure incompetent for the parties to a decree to bargain that a sale and conveyance to one of them under it, apparently absolute, should in fact be conditional, and the title be held only as security for the payment to the purchaser of the amount bid, with interest, according to the promise of the other party. At all events the judge held that it was incompetent to establish such an agreement by parol evidence. The power and capacity of the parties to enter into such an agreement is undoubted. (Conway's Executors vs. Alexander, 8 Cranch, 237.) The probability or improbability that they would do so, or that a mortgagee so situated, would do so, is quite another question. In this case, in addition to

the direct proofs on the subject there are many circumstances which render the making of the agreement highly probable. The fact that the foreclosure action was commenced in direct violation of the mortgagee's agreement, by which he had been let into possession, is a most important circumstance of this kind. Possession of the mortgaged premises had been surrendered by the mortgagor to the mortgagee, and was then held by the mortgagee upon the distinct promise and agreement on his part that he was to retain the same until out of the rents and profits, which amounted to a considerable sum annually and with proper management would in very few years suffice for that purpose, the mortgage debt and interest should be paid. Commencing suit in violation of such an agreement, it was most natural that the mortgagee, when applied to by the mortgagor or his agent upon the subject, should have entered into the agreement and made the excuses and explanations which it is alleged and proved he did do in this case. It would seem that the agreement by which the mortgagee obtained possession of the mortgaged premises was a valid one. It was made upon a valuable consideration, that is, the surrender by the mortgagor of the mortgaged premises to the mortgagee at a time when no part of the principal or interest secured by the mortgage was due, and when by law possession of

the mortgaged premises could not be obtained by the mortgagee without the consent of the mortgagor. It was, therefore, a valid agreement, and one of which the mortgagor might have availed himself in defense of the foreclosure action. But, be the point as it may, it furnishes a most ready and satisfactory explanation of how it was and why it was that the agreement with regard to future redemption by the mortgagor was made, and the foreclosure action allowed to proceed on the basis and faith of that agreement. Together with the many other proofs and circumstances disclosed by the record and unnecessary to be recounted here, it seems to establish the agreement for redemption beyond any reasonable doubt.

The question recurs, therefore, as to the admissibility of parol evidence in cases like this, which is the only point of any gravity or doubt presented by the record. It may be said that the evidence runs counter to the deed, and to what may be supposed to have been the object of the foreclosure proceeding. The same is equally true of every case where such evidence is admitted. In the case of a deed absolute on its face, it runs counter to the deed, and to what may be supposed to have been the object in giving it. There is not a reason which can be urged against its reception here that does not

exist, and might not be urged with the same force against its reception in any other case.

If a distinction is made it must be merely an arbitrary one. It cannot be rested on any sound principle. The distinction made by the learned judge below was arbitrary, purely so. It was a distinction so made at a time and under circumstances which it is respectfully submitted did not justify it. The facts of the case and the peculiar relations existing between the parties, the straitened and dependent condition of the mortgagor, who in the hope and endeavor to save his property from sacrifice had placed himself wholly in the hands and at the mercy of the mortgagee, instead of calling for a restricted and illiberal application of the rule of admissibility, called for the very opposite. Instead of being a case demanding an arbitrary restriction of the rule, it is submitted that it was rather one where equity and justice demanded its enlargement. But we ask no enlargement of the rule, but only a steady application of it, without unfounded and unjust discrimination, to all cases alike, in furtherance of justice and for the prevention of fraud.

This court has held, adopting after elaborate examination the rule laid down by the courts of all or nearly all of the states of the Union, that parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a

mortgage or deed of trust in security for the payment of money.

Babcock v. Wyman, 19 How. 289.

That was the case of a conveyance by the debtor himself, and not one where the title in which he was beneficially interested came by agreement between him and the creditor, to the latter from some third person, or where by a like agreement it was acquired by the creditor through a judicial sale. No case of the latter kind, so far as we know, has as yet been presented to this court. We have endeavored to show, and think we have shown, that on principle the cases are not distinguishable, and that the reason of the rule admitting parol evidence exists in the latter cases with quite as much, if not more force, than in the former, and especially that the rule ought not to be ignored or rejected in a case like the present.

It remains for us, therefore, only to show on authority, at least so far as the decisions of the courts of last resort of the several states are concerned, that no such distinction exists or has ever been judicially maintained. It seldom happens upon any question, that there can be found so many decisions in entire harmony with each other, and yet all or nearly all independently made, or not resting on the authority of the courts of other states.

With the exception of two or three decisions of an inferior court of New York, which will doubtless be cited by counsel opposed, the authority of the state courts, so far as our researches have extended, is all one way. Any distinction between conveyances executed upon judicial sales and conveyances of other kinds, with respect to the admissibility of parol evidence to show that the title of the grantee is defeasible upon the receipt or payment of money or of a debt, is altogether rejected as untenable and unsound. The following are the cases or some of them, in which the question has arisen and been adjudicated with respect to deeds executed *upon judicial sales*:

Paine v. Wilcox, 16 Wis. 202.
Sweet v. Mitchell, 15 id. 664, 665.
Arnold v. Cord, 16 Ind. 177.
Reigard v. McNeil, 38 Ill. 400.
Smith v. Doyle, 46 id. 451.
Roberts v. McMahon, 4 G. Green (Iowa) 34.
Sweetzer's Appeal, 71 Pa. St. 264.
Lillard v. Casey, 2 Bibb 459.
Griffin v. Coffey, 9 B. Mon. 452.
Soggins v. Heard, 31 Miss. 426.
Combs v. Little, 3 Green's Chy. (N. J.) 310.
Marlott v. Warwick, 18 N. J. Eq. (3 C. E. Green) 108.
Same v. Same, 19 N. J. Eq. (4 C. E. Green) 439.
Brown v. Lynch, 1 Paige 147.
Grimm v. Locke, 1 Head. 110.
Kennedy v. Howard, 6 Humph. 74.
English v. Tomlinson, 8 id. 378.

Haywood v. Ensley, 8 id. 460.
Harris v. Conway's Admr. 10 id. 349.
Denton v. McKenzie, 1 Desaussure 289.
Strong v. Glasgow, 2 Murphey 289.
Neeley v. Torian, 1 Dev. and Bat. Eq. 410.
Turner v. King, 2 Ired. Eq. 132.
Rich v. Marsh, 4 id. 396.
Vannoy v. Martin, 6 id. 169.

To the foregoing might be added many decisions in analagous cases, like those cited in 38 Ill. 406, where the transaction assumed the form of a purchase of land from the government as a security for the loan of the purchase money, and upon the facts being shown by parol, it was held to constitute only a mortgage.

It is submited that, both upon principle and authority, the evidence adduced in this case to show that the sheriff's deed was to operate only as a mortgage, was admissible for that purpose, and that the fact is clearly established, as will hereafter be shown.

THE FACTS.

I.

Assuming parol evidence to be admissible to establish the claim of appellant that the title acquired by the sheriff's deed was defeasible and not absolute, we proceed to state the testimony which we deem material bearing upon that feature of the case.

The first witness produced on behalf of the appellant was Richmond W. Howland. It appears from his deposition that he is a brother of appellant, and acted as his agent or attorney in the matter of giving the mortgage to Taylor, constructing the building and managing the property. (See record pp. 16, 17, 29; see also exhibit A, p. 56.)

The erection of the building was commenced in July, 1857, but was not completed until the spring or summer of 1859 (p. 16).

The money borrowed of Taylor was advanced from time to time, and was used in the construction of the building, a portion of it having been advanced before the mortgage was given (p. 16).

After the building was completed, it was rented for an annual rental of about $2,200 (p. 16).

The upper story was surrendered to Taylor, January 29, 1859, by an assignment of the lease, of which assignment exhibit B at page 57 is a copy. The balance of the building was surrendered May 9, 1858, to Phineas Hardy, who held a junior mortgage, by a written surrender, of which exhibit C at page 59 is a copy.

Afterwards, in the latter part of 1859, or fore part of 1860, the whole building was surrendered to Taylor (record p. 16.)

The witness says :

"I gave him a written surrender, very similar to the one under which Mr. Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt and interest ; he agreed to carry the property until the debt was canceled in that manner; I think he qualified that by saying, or until it was evident that the property would not pay it, and in case it was thought advisable to sell the property, the proceeds, after paying him should revert back to Eugene Howland, the complainant; I think that is about the substance of it." (p. 17.)

It appears that the undertaking on the part of Taylor was not in writing. Neither the written surrender, nor a copy of it, could be produced. (See p. 17, and Kelly's deposition, p. 49.)

The witness says:

Taylor took "possession under that arrangement and

kept possession until it was transferred to Blake and Elliott, the defendants in this suit. (p. 18.)

"Shortly after the suit was commenced I called on him with reference to the foreclosure, at which time he assured me that the plaintiff's interest, that is, Mr. Eugene Howland's interest in it should not be affected by it; that he only commenced the suit for the purpose of perfecting the title. He also said he would carry out, in good faith, all arrangements he had made previous to that; he agreed to bid in the property for the amount due on the judgment and I was not to make any delay in the suit; he was to continue in possession, and apply the rents and earnings as he had done previously. After the debt was paid the property was to revert back to the plaintiff; there was to be a conveyance made to him." (p. 18.)

In connection with what he says of the arrangement with Mr. Blake for carrying the property, witness says:

"There was an arrangement by us at the time of the sale. Mr. Blake, in connection with Mr. Horatio T. Taylor, who was then sheriff, agreed to take the property and carry it six years; they were to pay $2,000 down and the balance in six years time at 7 per cent. interest, and the plaintiff in this suit was to pay them ten per cent. and Mr. Sheriff Taylor was to take charge of the property, collect the rents and apply it to the cancellation of the indebtedness. Isaac Taylor was to convey the title of the property to them. After this arrangement was made I took a trip to the country for about a week, and when I returned was informed that for some reason the arrangement had fallen through." (p. 19.)

He says that shortly before the arrangement was

made with Blake & Elliott, Taylor told him he had a proposition from Chicago for the property "whereby there would be $4,000 or $5,000 coming to the plaintiff" (p. 21).

On cross-examination he testifies:

Question. You have stated that Mr. Taylor told you that he foreclosed for the purpose of perfecting the title. Did he state in what particular the title needed perfecting?

Answer. He did not; he only stated in general terms.

Q. Did you then consent to the foreclosure?

A. I did.

Q. For what purpose did you consent?

A. I don't know that I had a purpose; I had a reason; because he had agreed to carry out his promises in good faith.

Q. Was there anything, to your knowledge, in the title which prevented the carrying out of the agreement in good faith, without a foreclosure?

A. I thought it rather unnecessary, but he insisted, and I consented on his agreeing to fulfill his previous agreement.

Q. Did you not at the time the forclosure was commenced, know of these claims of which you have spoken against the property, and that they would be cut off by the foreclosure?

A. I understood that there were quite a number of claims in which the parties had not made the proper application for liens, and the time had passed for them to file liens, and those that were liens Mr. Taylor had cared for.

Q. What became of the claims upon which liens had not been perfected?

A. Some of them have been paid; some partly paid, and others not paid at all.

Q. Did you not know at the time the foreclosure was

commenced that it would cut off any judgments that might be obtained on those claims on which liens had not been perfected?

A. It would, as judgment liens, but not as mechanics' liens. I must have known it then; I know it now.

Q. Was that not talked about between you and Mr. Taylor, at or before the time the foreclosure suit was commenced?

A. I have no knowledge of having any conversation with Mr. Taylor before the foreclosure commenced, nor for sometime after it commenced, for he was absent from home at the time it was commenced; as soon as he came home I called upon him, and had this conversation in which he agreed not to harm my brother's interest, and carry out his previous agreement in good faith.

Q. Was not the matter of cutting off claims upon which mechanics' liens had not been perfected, talked about by you and Mr. Taylor before or after the foreclosure was commenced?

A. It may and may not. I could not say for certain.

Q. At your interview with Mr. Taylor after his return, did he not state to you that the object of the foreclosure was to cut off all such claims?

A. He stated that it was to clear up and perfect the title; don't think any particular class of claims was mentioned.

Q. Was there any other encumbrance at that time upon the property except mechanics' claims?

A. There were not, except that Mr. Rhodes had a deed based upon one of the mechanics' liens, but Mr. Taylor told me he controlled that; he controlled it before he commenced the foreclosure.

Q. Is it not true that it was the object of the foreclosure to cut off claims upon which liens had not been perfected, but which might subsequently be put in judgment?

A. Very probably.

Q. Did you not so understand it?

A. It was to cut off claims and perfect the title; that is the way I understood it. (p. 25–6.)

Q. Was the talk with H. T. Taylor about the property, referred to in his testimony, which he designated as the arrangement with yourself, Mr. Blake and Mr. Isaac Taylor, had at the time of the foreclosure sale?

A. It was had mostly on that day and the day before, but they did not come to any definite arrangement on that day; I asked Mr. I. Taylor for an adjournment of the sale for a few days; he said that would make no odds, he would bid it off and hold it until arrangements could be completed; the day after the sale he did make positive arrangements as I understood; I then went on with my business as usual, with the understanding that the writings were to be drawn in my absence. (p. 27.)

HORATIO T. TAYLOR testifies that he made a sale of this property as sheriff. He says:

There was an arrangement entered into, but not carried out, between Mr. Isaac Taylor, Mr. Blake one of the defendants, and Mr. R. W. Howland and myself; I think it was a short time after the sale, but I am not positive; it might have been a little before the sale.

Q. State what that arrangement was.

A. There was considerable talk in regard to this property, betwen Mr. Isaac Taylor, Mr. Blake and myself, both before and after the sale, but I cannot tell whether the arrangement was made before or after; the arrangement was that Mr. Blake and myself were to take a deed of the Howland block for about $9,300; we were to hold the property for a certain number of years; my impression was it was six years; collect the rents, pay the taxes, keep the property in proper shape, and if at the end of said time the property had paid for itself, or near enough so

that Mr. Howland could make up any deficiency, we were to convey the property to him. My understanding of the way that sum was arrived at from conversation between myself, Blake and Taylor, was that it was for money Mr. Taylor had advanced on the property, and there were some mechanics' liens, I think, included in the sum. I understood that was the sum due Mr. Taylor for money advanced, and those mechanics' liens, less the amount he had received in rents from the property; we were to pay Mr. Taylor $2,000 down, and I cannot tell just when the balance was to be paid, but there was an arrangement that by paying the balance in a shorter time, he was to take a less sum for interest. The arrangement between Mr. Blake and myself was, that I was to take charge of the property, keep it in shape, pay the taxes, and keep it in repair, lease it and collect the rents; I was to have compensation for this $200 per annum. That arrangement was not carried out for two or three reasons taken together; one was, that in the condition the country was then, I did not want to tie up my means in that way; another was, that I wanted a separate deed from Mr. Taylor for an undivided half of the property; Mr. Blake preferred to have the property together, and wanted us to pay $1,000 each on it and then let it pay for itself after that, so far as he was concerned. It was to be a part of my business to keep a correct account of all rents, taxes, insurance, and all outgoes and incomes of the property. (p. 32–3.)

Q. Did you have an interview with Mr. Isaac Taylor, subsequently to the time this arrangement fell through, in relation to the property?

A. Yes, sir; a very few days after; it was after he had been (bid) in the property.

Q. State what that interview was.

A. I went to Mr. Taylor and proposed to him that I would take the entire property at the price agreed upon between Mr. Blake, him and myself, and take the title in

fee. He said if Mr. Howland would consent he would deed it to me; that without his consent he would not do it for that price, remarking at the time, "You know, Mr. Taylor, that is no compensation for that property." He told me at that time how he was holding the property, and why he wanted to get it off his hands; that there was an agreement between him and Mr. Howland that the property should be foreclosed upon a mortgage he held, for the purpose of perfecting the title; that Mr. Howland expected to have some one bid it off for him on the day of sale; he said he was holding the property for Mr. Howland; that he put so much money in it, and when Mr. Howland paid him his money and interest he was to deed the property to him; that he was in hopes, and did expect, that Mr. Howland would make arrangements with some one to bid it in for him at the sale, and relieve him from the care of looking after it. The reasons he gave me for wanting to get rid of it were, that it had reached him that Mrs. Howland was reporting around the streets that people were saying to her that Taylor had got the property in his own hands, and that they would never get any benefit from it. (p. 33–4.)

On cross examination, witness testifies :

Q. What do you mean when you state that the foreclosure of that mortgage was for the purpose of perfecting the title to the property?

A. I mean by that, it was to transfer the title from Eugene Howland to the purchaser, and to fix up mechanics' liens and other encumbrances against it, and get it all into one sum. (p. 34.)

Q. Was the property to be conveyed to yourself and Mr. Blake, jointly?

A. That, I suppose, was the arrangement to start with.

Q. Was it not one of the reasons for the abandonment

of the arrangement, that if you went into it at all, you wanted a title in fee, without condition?

A. That is what I wanted originally.

Q. Was not that one of the reasons for your refusal to consummate the arrangement?

A. It might have been. Mr. Blake tried to have Howland consent to have Isaac Taylor convey to me an undivided half without conditions. Mr. Blake represented to Mr. Howland that if I wouldn't carry it with him that way, he had better let the half of it go in fee.

Q. May not this have been before the forclosure sale?

A. Possibly it might; I know we talked considerably before the sale and talked after the sale. (p. 35–6.)

Q. Is it not your recollection that at the time of that interview $9,300 was due Isaac Taylor?

A. I have that impression in my mind that was the sum we were to pay him. It is my understanding that the amount Mr. Blake and I were to pay Mr. Taylor was the amount due him, and I am strongly of the impression that the amount was about $9,300.

Q. How long after the interview between yourself, Blake and Taylor, when the proposed arrrangement was talked about, was it before you had a final talk upon the subject with Blake and Howland?

A. I can't tell; I don't think it was a great while; it was after the sale. (p. 36–7.)

Wm. H. Jenks says, as to a statement made by Isaac Taylor in the presence of R. W. Howland and at his request:

"Mr. Taylor stated that he held the property, and whenever the rents would pay what he had advanced in material for the erection of the building, and moneys, that the property should go back. He stated that as the arrangement he had with Mr. Howland. He made a re-

mark that he had the title of the property perfect. During our conversation he spoke of holding the widow Wright property in a similar way."

Q. What did he say about that?

A. That he had held that property quite a number of years, receiving the rents for the moneys he had advanced for the erection of the property.

Q. How did he come to state that in that connection?

A. Mr. Howland didn't seem exactly easy; didn't seem exactly satisfied with regard to the Howland block; he, Mr. Taylor, spoke of the widow Wright property, that he had held it in a similar way, and he had always carried out his agreements to the letter as he had agreed. (p. 37–8.)

M. R. TEEGARDEN says he had a conversation with Isaac Taylor in reference to this property:

"It was in the fore part of March, 1863; I spoke to Mr. Taylor one morning as he was going down street, past my house. Says I, 'I understand you foreclosed the mortgage on the Howland block;' he said he had, and said he had done it to secure himself; he then said that as soon as they paid him what he had advanced and interest, it reverted back to them; that was about all the conversation about it at that time; afterwards, about the last of March or first of April, 1863, I had another conversation with Mr. Taylor; I think it was a couple of weeks after the first, or it might have been three weeks; I went down to Mr. Taylor's office to buy the property. Mr. Taylor advised me to have nothing to do with it; as a friend of mine he advised me; for, says he, I have an agreement or arrangement with Mr. Howland that if they paid him up the principal and interest, the property was to revert back to them; he said the building was rented well, and he was applying the rents to the principal, and he thought they would pay it up

eventually; he then said that he couldn't give me a clear title to it, any way, as he had made that arrangement with them, and he advised me not to have anything to do with it or I might have trouble; he advised me to buy property that I could buy clear and unencumbered, and have no trouble with it." (p. 41–2.)

JAMES H. KELLY testifies that he kept the private accounts of Mr. Taylor in part; that when he was not in, Mr. Murray made entries; that he has the account book of Taylor for the year 1863; that there is an account in that book with "Howland Building" on pages 10 and 11; that the entries are in his handwriting, with two exceptions, which are in Murray's handwriting on page 10, and which are "payment to John Conroe, and a bill of iron for windows," dated April 9 and 15, 1863, amounting to $6.62 both together. The entries are as follows:

PAGE 10.

HOWLAND BUILDING, DR.

1863.		
Jan. 1.	To amount for same	$9,650 00
April 9.	To John G. Conroe's bill of iron and screws	5 32
April 15.	To iron for windows	1 30
"	To int. and profit for int. on investment to April 1	635 25
		$10,291 87

PAGE 11.

HOWLAND BUILDING, CR.

1863.		
April 18.	By sale to Blake & Elliot.....	$10,000 00
"	By rents from January to April...	
"	" Sandford & Tapply. to April 1.....	50 00
"	By rents from Lyon & Adams to April 1.....	25 00
"	By rents from Burch & B. to April 1	82 50
"	" B. F. Weeks to Ap'l 1	75 00
"	" Payne & Millett to April 1.....	31 25
"	By rents from C. W. Bennett to April 1.....	28 12
		$10,291 87

Witness continues:

"I made these entries at the request of Mr. Taylor at the times they were made according to their dates; this is the last account I know anything about, and it is not carried forward to any other book and these are the original entries." "This book was started January 1, 1863, to show an inventory of Mr. Taylor's property on that date, and with the intention of keeping his accounts in it." (p. 48–9.)

On cross-examination witness gives instances in which a debit and credit account is kept with property, and says he thinks it was Mr. Taylor's habit to keep a debit and credit account with all real estate which he owned, with the exception of his farm and his homestead. (p. 50.)

A. P. DUTTON, in relating a conversation between himself and Blake, says:

"I understood Mr. Taylor to say, time and time again, that he was holding that property for Mr. Howland; he claimed credit for getting the building well rented; getting the postoffice there, and the city council, and got the building nearly all rented at a good rent; claiming that it was a great bother to him and that he got nothing from it but his interest, and that it was only a favor to Mr. Howland to save him from losing his property." (p. 67.)

JOHN W. ENGLISH says he "went to Mr. Isaac Taylor to enquire of him how the title stood, and how the matters were; he told me, I think, that he had a sheriff's deed of it; he said he had had the property sold at public sale to perfect the title to it, on account of some liens or judgments, I don't know which; he said he had been carrying it since spring, I think, for the boys, and he wanted to get it off his hands, and any arrangement I made with Mr. Howland, either to take part of it or the whole, would be satisfactory to him." (p. 69.)

On cross-examination witness testifies:

Q. What is the reason you did not take the half interest in the property from Taylor?

A. That idea had never been entertained or mentioned at all; I simply went to see him with reference to taking the title to the whole of it, with Blake, and to see how it stood.

Q. Did Taylor offer to let you have the whole, or any part of it?

A. No, sir; he said that any arrangement I would make with Howland would be all right; I never talked of buying a part of it except in connection with Mr. Blake. I told Mr. Taylor that Mr. Howland had requested me to

take the whole of it, but the distance I lived from Racine was such that I could not attend to it; then he stated that any arrangement I made with Mr. Howland to take the half, or the whole with Mr. Blake, would be satisfactory. (p. 70–1.)

APPELLEES' TESTIMONY.

HENRY T. FULLER testifies as follows:

Q. Were you pretty well acquainted with Mr. Taylor's business?

A. I think our firm did a very large majority of his law business, and I, myself, did a very large part of his business, and was his confidential legal advisor.

Q. During the time that mortgage was being foreclosed, did you know, or learn from any person, that there was any agreement between Mr. Taylor and Eugene Howland whereby Howland was to retain an interest in the property, or to have the property when the rents would pay it, or on the happening of any other contingency?

A. No, sir.

Q. Did you learn any fact, which led you to believe it was not an absolute foreclosure of the mortgage?

A. No; I had no intimation of the kind, and had no knowledge of any agreement or understanding of the kind; on the contrary Mr. Taylor urged me to prosecute the foreclosure for the purpose of protecting his interests. I communicated the fact to Mr. Taylor that we were perfecting a lien on the property for material furnished; he became anxious concerning the lien, being a prior lien to his mortgage, and urged prosecution.

He also says:

"My memory is, that, under instructions from Mr. Taylor, I bid off the property at the sale in his name." (p. 111–12.)

In speaking of Mr. Taylor's business habits, he says:

"He was very cautious as every one knows; scrutinizing every transaction in business thoroughly himself, whether the business was transacted by himself or by others for him; when transacted by himself, as was frequent, he would come into the office and ask the legal bearing of propositions, before closing the transaction. He seldom, if ever, entered into a contract hastily; always took care to be well understood in the terms of a contract, and in all the business that I transacted for him it was seldom any misunderstanding occurred between him and the party contracting or doing business with him. In all matters of time, his general habit was to reduce business transactions to writing; in matters to be accomplished immediately, that is within a few days, he would often require a memorandum in writing. I never knew him to make a verbal contract concerning real estate where it involved time, except in some leases for a short time." (p. 112–13.)

WARREN J. DURHAM testifies that in the years 1860, '61, '62 and '63 he was engaged with Strong & Fuller (plaintiff's attorneys in the foreclosure suit) in the practice of law. That some papers in the suit were in his hand-writing—that most of the other papers

were got up under his supervision, and that he had knowledge of the suit while it was taking place.

Q. Did you have any knowledge or information that the foreclosure of this mortgage was not an absolute and unconditional foreclosure, in the ordinary form?

A. I had no knowledge or information of the kind.

Q. Do you recollect conversations between Mr. Taylor, and Strong and Fuller, or between Mr. Taylor and yourself, relative to the foreclosure of this mortgage?

A. I do not, at this time, recollect any conversations between Strong and Fuller and Mr. Taylor on the subject in question, nor any conversations between Mr. Taylor and myself, beyond the fact that I took his testimony as to payments on the mortgage, and had some conversation with him on that subject, the details of which I do not now recollect.

Q. Did you ever, at any time, receive from Mr. Taylor any knowledge or intimation, either before, during, or after the foreclosure of the mortgage, that Eugene Howland was to have or retain any interest in the property foreclosed, upon the happening of any contingency?

A. I haven't the slightest recollection of anything of the kind. I think I can safely say I never had such knowledge or intimation. (p. 114–15.)

A. O. Burch testifies:

Q. State whether you ever had any conversation with Isaac Taylor about the purchase of the Howland block property.

A. I had a little; I think it was about a year, or a year and a half after we rented of him. I think it was after he foreclosed the mortgage on the property.

Q. State the conversation as near as you are able, and the circumstances under which it was had.

A. I was paying Mr. Taylor the rent, and he made this remark: he wanted to know if we didn't want to buy this block from him, and not having the means we replied that there was no use talking about it, and we couldn't think of it. That was all the offer he made to us, and all that was said. (p. 106–7.)

At p. 105, witness says:

"We rented the store from Isaac Taylor in 1860."

F. W. BRUCE testifies:

Q. State whether at any time before the purchase of that property by Blake and Elliott, Mr. Taylor offered or proposed to you, or your firm, that you buy the property.

A. He mentioned the matter once in our store, and said he thought it would be a good thing for us to buy the property—he rather advised us to buy it, but I cannot state what the conversation was. He offered to sell it to us if we would buy it. (p. 123.)

On cross-examination, witness testifies:

Q. How did the conversation about selling the property commence?

A. I couldn't state—don't recollect.

Q. What did he say about it?

A. I don't recollect any particular language he did use.

Q. What is the substance of what he said?

A. It was offering to sell, and, I think, rather advising us to buy.

Q. What reply did you or Mr. Burch make?

A. I don't recollect exactly—we had no money to invest in that way, and couldn't entertain any proposition of the kind.

Q. Wasn't he aware of the fact that you hadn't money to invest in that way?

A. He was. The proposition didn't result in any negotiations. (p. 125.)

ALBERT G. KNIGHT says of Isaac Taylor:

"He was remarkably particular in making any bargain or agreement –very careful not to leave anything unexplained. One of the most particular men in making a bargain that I ever knew. I found it difficult to draw an agreement for him that was sufficiently precise to please him."

Q. What were his habits about reducing his agreements to writing?

A. I know nothing about it, except in so far as he employed me.

Q. As far as your knowledge extends, what were his habits about reducing his agreements to writing?

A. All his business transactions, that I knew anything about, were reduced to writing. (p. 144.)

Witness continues:

"I knew Charles Clement. I made a deed from Mr. Taylor to Mr. Clement of a lot adjoining the Howland block, and I think it included a part of the wall, or the use of the wall of the Howland block. My impression is, that previous to the deed I made an agreement between

them as to what was to be done. This agreement was carried into effect by the execution of the deed, and an agreement back to Mr. Taylor from Clement." (p. 145.)

Referring to defendant's Exhibit No. 1, he says:

"This is the deed above referred to. I think the value of the strip of land for the alley was about $100.00. The alley was in the rear, not directly of the Howland block, but cornering on it. The alley runs east to Chatham street—I think the northwest corner of the alley touches the southeast corner of the Howland block. I have no recollection about the consideration of the deed having been paid. The agreement that was drawn before the deed was executed, was not put on record." (p. 145.)

HENRY S. DURAND says of Isaac Taylor:

"He was a very sharp, thorough, careful, exacting, cautious, but a very honorable and honest business man." (p. 152.)

LUCIUS S. BLAKE, one of the appellees, in his direct examination, testifies as follows:

Q. Did you have any conversation with Isaac Taylor and R. W. Howland about joining Horatio Taylor in taking title to the Howland block for the benefit of Howland?

A. Not when we were all present at one time.

Q. Did you have any conversation relative to taking the title to that property—if so, when was it?

A. I did, with Isaac Taylor and with Horatio Taylor; it was sometime in the spring of 1862—in May or June—it was before the foreclosure sale to Mr. Taylor.

Q. Did you talk with Mr. R. W. Howland about it?

A. I think I did, in presence of Horatio T. Taylor, at H. T. Taylor's store.

Q. What was the conversation, as near as you can state it, and what were the negotiations between you?

A. Mrs. Howland had told me that Horatio Taylor would join me in the purchase of the property they thought, if I would assist. I think it was the next day that I met Mr. Howland and Mr. Horatio Taylor at his store, and there the matter was talked up. There was no agreement come to at that time, and in talking with Mr. Horatio Taylor, in the absence of Mr Howland, Mr. Taylor told me that he had finally made up his mind to have nothing to do with it, as he did not like the arrangement. There the matter ended, as far as that negotiation was concerned.

Q. What was the negotiation between Taylor, Howland and yourself, at that time?

A. I think that we were to advance $2,000, that is, $1,000 each. We were to take the title at the foreclosure sale, and Mr. H. T. Taylor was to take charge of, and look after, the property. The understanding was then, that we were to take the property, hold it and collect the rents a certain number of years—I think it was five, and it might have been six—and give Mr. Howland that time to redeem it—Mr. R. W. Howland.

Q. Was there any talk or conversation that the arrangement was made for the benefit of Eugene Howland?

A. No, sir; I did not know Eugene Howland in the transaction at all.

Q. After this interview, at H. T. Taylor's store, did you have any other interview with H. T. Taylor and R. W. Howland?

A. Not when we were all three present. I had talk with H. T. Taylor, but not in presence of Howland. (p. 160.)

On November 16, 1859, appellant conveyed lot 4, covered by the mortgage, to Jacob Wrattan, with covenants of title and against encumbrances, "reserving from said lot a strip ten feet wide, on the north side thereof, which said ten feet is reserved for an alley." Consideration named in the deed is $700.00. (Appellant's Exhibit G, p. 91.)

On January 19, 1860, Wrattan conveyed said lot 4, except said strip of ten feet, by quit-claim deed to M. B. Throup, the consideration in the deed being $300.00. (Appellant's Exhibit H, p. 92.)

On January 24, 1860, Isaac Taylor conveyed said lot 4, to said Throup, by quit-claim deed, the consideration in the deed being one dollar. (Appellant's Exhibit I, p. 93.)

On *March* 8, 1862, complainant and said Throup

conveyed said strip of ten feet to Isaac Taylor by quit-claim deed, the consideration in the deed being ten dollars. (p. 284.)

On July 7, 1862, said Taylor executed a warranty deed to Charles Clement, conveying said strip of ten feet, "to be used as an alley for the benefit of the building on the north half of lot No. eleven (11), in said block No. eighteen (18), in common with the said party of the first part, his heirs and assigns;" also the right to tap the drain across said strip of ten (10) feet; also the south half of a portion of the south wall of the Howland block, and also the right to anchor grantee's building, in process of erection, to said wall. The consideration mentioned in this deed is one thousand (1,000) dollars. (Appellees' Exhibit 1, p. 217.)

On July 7, 1862, date of last deed, said Clement executed to Taylor an agreement reciting the provisions of said deed, and containing the following: "The said party of the first part, in consideration of the conveyance above named, and of the premises, has bound himself, and hereby does bind himself, his heirs, executors, administrators and assigns, that from a point that is forty-nine and eight-twelfths (49 8-12) feet east-

erly from the south-west corner of said Howland's block, and from an elevation equal to the height of the floor of the second story in said Howland's block, the north wall of said building now in process of erection by said party of the first part shall not be placed nearer to said south wall of said Howland's block than a distance of five (5) feet, which space from the top to the second floor is forever to remain open and uncovered, and not to be occupied for any use or purpose." (Appellant's Exhibit F, p. 89.)

It appears by the complaint in the foreclosure suit that the amount claimed to be "actually due" on the bond and mortgage was "about the sum of seven thousand dollars." (p. 233.)

The judgment in the foreclosure suit was entered February 26, 1862, for $8,866.82 for principal and interest, amounting with costs to $9,070.02. (p. 258.)

The property was advertised for sale March 5, 1862. (p. 263.)

The property was bid in by Taylor, at sheriff's sale, June 19, 1862, at $9,300, leaving a deficiency of $1.62. (Report of sale p. 261.)

Before considering the testimony bearing directly upon the question of the agreement between appellant and Isaac Taylor, we desire to call attention to the situation of the parties, and the circumstances under which the agreement is claimed to have been made.

Mr. Taylor, for the purpose of aiding appellant in the construction of a building, agreed to loan him the sum of seven thousand dollars, and to advance the money from time to time as it should be needed, and as the work progressed,—the amount of the loan being less than one-third of the actual cost of construction. Upon the completion of the building it was rented so as to produce an annual income of about $2,200. Taylor was let into possession, and was permitted to receive the entire net receipts, to apply on his debt. In consideration of the surrender, Taylor "agreed to carry the property until the debt was canceled in that manner," "or until it was evident that the property would not pay it." The agreement on the part of appellant was in writing, but the agreement of Taylor to "carry the property" rests in parol. It may be urged that this undertaking of Taylor, not being embodied in the writing, cannot be established by oral testimony; but no attempt is made to vary or contradict the terms of the writing. The surrender was in the nature of a deed or an assignment, and was executed by appellant only. It is not

essential that such an instrument should embrace that part of the contract which constitutes its consideration, or the inducement which led to its execution. It is governed by the settled rule that, "when only part of an entire agreement is reduced to writing, the residue may be proved by extrinsic evidence."

Ballston Spa Bank v. Marine Bank, 16 Wis. 125.

The fact of the surrender is not questioned. The result of making it was to deprive Howland of the ability to meet the demands of other creditors who had contributed, in material or labor, to the construction of the building; and Taylor, having control of the rents, was forced to satisfy these demands, as they were pressed for payment, or permit his rights in the property to be complicated by them. A portion of this class of claims he paid; but being advised that a lien was being perfected which was prior to his mortgage, "*he became anxious concerning the lien*," and directed a foreclosure suit to be prosecuted, "for the purpose of protecting his interests;"—not to enforce payment of the debt, but to save his security from jeopardy. Such was the origin and object of the suit, as we are informed by the testimony of one of Mr. Taylor's attorneys in the case, who was produced as a witness on behalf of appellees (*ante* p. 39). This explanation of the apparent bad faith on the part of

Taylor in commencing suit, in violation of the agreement under which he acquired possession of the property, fully accords with that given by Mr. Taylor to appellant's agent, when called on by him in reference to it. He said on that occasion, that he "*only commenced the suit for the purpose of perfecting the title*" (*ante* p. 28). He gave the same explanation in substance to several others who testify to his declarations.

With this explanation of the purpose of the foreclosure suit, it is not unnatural that Richmond W. Howland, acting for appellant, should have been induced not to interpose the defense of the former agreement, upon the promise of Mr. Taylor that the terms of that agreement should be carried out, and that to accomplish that purpose, he would bid in the property at the sale, and restore it to appellant after the debt should be paid by the rents.

As to the fact of this second agreement having been made, we submit that the testimony leaves no room for doubt. Richmond W. Howland testifies that he made it; his testimony is in harmony with all the other evidence on the subject. But the existence of the agreement does not rest upon the evidence of this witness alone. The declarations of Isaac Taylor, made after the sale and while he was in possession of the property, are to the same effect. These declara-

tions are testified to by Horatio T. Taylor (*ante* p. 32–3); William H. Jenks (*ante* p. 34–5); M. R. Teegarden (*ante* p. 35); A. P. Dutton (*ante* p. 38–9); and John W. English (*ante* p. 38). They were made deliberately, and not in casual conversations; the statements to Taylor and Teegarden were in answer to applications by them to purchase the property; the statement to Jenks was made in the presence of R. W. Howland, and at his request; and that to English was made on his applying to Taylor to ascertain how the title stood, in view of purchasing it in connection with Mr. Blake.

Prior to the sale, an effort was made by both Isaac Taylor and R. W. Howland, the agent of the appellant, to induce other parties to take the property and assume Mr. Taylor's position in reference to it. Negotiations to this end were pending between them, and Blake and Horatio T. Taylor at the time of the sale. An arrangement was being made by which, after the sale, Isaac Taylor was to execute a deed of the property to them—Blake and Horatio T. Taylor, —for the amount of the debt, to be paid, partly in cash at the time of the transfer and partly on time. This arrangement not having been completed when the time of sale arrived, Howland applied to Isaac Taylor for an adjournment for a few days, but "he said that would make no odds; he would bid it off

and hold it until arrangements could be completed." The sale was accordingly made, and the title taken in the name of Isaac Taylor. The negotiations pending at the time of the sale were continued for some time thereafter, but were finally abandoned. As to these negotiations, we have the testimony of Howland (*ante* p. 28–31), and Horatio T. Taylor (*ante* p. 31–4). Their evidence must be held conclusive, unless it is outweighed by that of Blake, who admits the fact and character of the negotiations as stated by the other witnesses, but claims they ceased at the time of the sale, and that by the arrangement the title was to be taken by him and Horatio T. Taylor at the sale (*ante* p. 44–6). Horatio T. Taylor having been the sheriff who made the sale, and who was to execute the deed as such officer, it is unreasonable to say it had been arranged that he should make the sale and execute the deed to himself as one of the grantees. The impossibility of passing the title in that way is a circumstance at least tending to show that Blake was in error, and the other witnesses in the right, as to the points in which their testimony is in conflict.

As heretofore shown, the agreement on the part of Isaac Taylor, to bid in the property and allow a redemption after sale, was one which a court of equity would enforce, in case he had attempted, after obtaining the sheriff's deed, to repudiate it. The prior

agreement, under which he obtained possession of the property, would, if plead, have constituted a valid defense to the foreclosure suit; and the waiver of that defense was a sufficient consideration to support the subsequent agreement. There can be no doubt but that the object of the surrender was to enable Taylor to realize his debt from the income of the property. Could it have been contemplated that the rents would have been sufficient to pay the debt within the period of eighteen months intervening between the surrender and the commencement of the foreclosure suit? The fact that, under the circumstances of the case, no defense was interposed, is a strong circumstance tending to show the existence of the agreement.

Another circumstance tending to show the agreement is found in the fact that the amount claimed by Mr. Taylor to be "actually due" upon the bond and mortgage at the time of commencing suit, as shown by the complaint, was only "about the sum of seven thousand dollars," whereas the judgment was entered for principal and interest, $8,866.82. The complaint was filed August 10, 1861, and the judgment entered Feb. 26, 1862. The interest, at 10 per cent., from the date of filing the complaint to the date of judgment, is $381.11. The judgment, therefore, was for $1,485.71, in addition to six month's rents, more than Mr. Taylor appears to have been entitled to.

This excess over the amount claimed in the complaint, may and probably does represent moneys paid by Mr. Taylor on account of claims against the mortgagor or the property, and probably was inserted in the judgment by consent of appellant's agent. Is it reasonable to suppose, that consent would have been given, thus to increase the judgment, unless some such agreement had been made? If the judgment had been thus increased without consent, is it reasonable to suppose it would have been permitted to stand? Would not an appeal have been taken and the judgment reversed?

On Nov. 16, 1859, appellant conveyed lot 4, which was originally covered by the mortgage, to Jacob Wrattan, reserving a strip of ten feet on the north side for an alley. On Jan. 19, 1860, Wrattan conveyed this lot, making the same reservation, to M. B. Throup. On Jan. 24, 1860, Isaac Taylor conveyed the lot by quit-claim deed to Throup. This deed was given, as we understand from the foreclosure complaint, at page 233 of the record, for the purpose of releasing the lot from the lien of the mortgage. On March 8, 1862, after the property had been advertised for sale on the foreclosure judgment, and before the sale, appellant and Throup conveyed this strip of ten feet to Isaac Taylor. At the time the deed was given, the title to the land conveyed by it

was in appellant, discharged of the mortgage, and Throup had no real interest in it.

The property was used for an alley in connection with the Howland building and was worth "about $100" (*ante* p. 44). The consideration in the deed being merely nominal—ten dollars—it is fair to presume, under the circumstances, that the amount, if paid at all, went to Throup for his supposed interest. It was the evident intention in giving this deed, on the part of both Taylor and appellant, that the alley and the lot covered by the mortgage should be kept together as an entire property, and as such, should go to the purchaser at the foreclosure sale. Now, if no arrangement had been made by which Taylor was to be the purchaser, why should appellant have conveyed the alley to him?

The account of Isaac Taylor with the "Howland building" which was opened January 1, 1863, shows as the first entry a gross sum called "amount for same," $9,650, which appears to be a net balance transferred from a former account. The building is charged with two small items of repairs, and with an item called "int. and profit for int. on investment to April 1, $635.25." The aggregate debits amount to $10,291.87. The building is credited April 18 with "sale to Blake & Elliott $10,000," and with items of rents "to April 1," amounting to

$291.87, the whole credits being $10,291.87, and balancing the account. Whatever may be the meaning of the item "int. and profit for int. on investment to April 1," it is clear that the sum of $10,000 was the amount Mr. Taylor considered to be due him on his debt; and that this sum was demanded as the amount so due him, in making the transfer to Blake & Elliott (*ante* p. 36–7). This conclusion accords with the claim of the appellant, the declarations of Isaac Taylor and the circumstances surrounding the case.

It is sought to rebut the appellant's proofs on the question of the agreement:

1st. By offering testimony tending to show that Taylor did not inform his attorneys of the existence of any such agreement, and by showing that he directed them "to prosecute the foreclosure for the purpose of protecting his interests."

Mr. Fuller, one of the attorneys, who instituted that suit, testifies that he had no knowledge of such an agreement. It appears from his testimony, however, that "*under instructions from Mr. Taylor*" he "bid off the property at the sale in his name" (*ante* p. 40). These instructions of Mr. Taylor hardly tend to show there was no agreement that the property should be bid off in his name. Being unqualified, they would seem to indicate that there was such an agreement.

Mr. Durham, who was engaged with Strong &

Fuller, plaintiff's attorneys, in the foreclosure suit, also testifies that he had no knowledge or information that the foreclosure of the mortgage was not an absolute and unconditional foreclosure, in the ordinary form. He also says that he does not recollect any conversations between Strong & Fuller and Mr. Taylor, or between Mr. Taylor and himself on the subject.

It is apparent from the testimony of these witnesses, particularly that of Mr. Fuller, that Mr. Taylor did not consult his attorneys as to whether or not he should foreclose the mortgage; he determined that question for himself. His instructions were to "prosecute the foreclosure for the purpose of protecting his interests." This was prior to the agreement, and, if inconsistent with it, proves nothing. But is there any inconsistency between the instructions and the terms of the agreement? It was not the money Taylor wanted—he was looking only to the protection of his security. By the terms of the agreement he was permitted to prosecute the foreclosure, with the utmost speed, without opposition; and by bidding in the property and receiving the rents, he was permitted to realize the most ample protection of his interests, which the security could in any manner be made to afford him.

2d. It is attempted to show that Mr. Taylor of-

fered or proposed at one time to sell the property.

Mr. Burch, of the firm of A. O. Burch & Co., testifies that he had a little conversation with Isaac Taylor about the purchase of the property; he says Taylor "wanted to know if we didn't want to buy this block from him, and not having the means we replied that there was no use talking about it, and we couldn't think of it. That was all the offer he made to us and all that was said" (*ante* p. 41–2).

Mr. Bruce, another member of the firm of A. O. Burch & Co., speaking of the same conversation, says Taylor mentioned the matter once in their store and said he thought it would be a good thing for them to buy it—that he offered to sell it if they would buy it. He says they had no money to invest in that way, and that Mr. Taylor was aware of the fact; and that the proposition did not result in any negotiations (*ante* p. 42–3).

We see nothing in this testimony to indicate that Mr. Taylor made or intended to make any serious offer or proposition to sell the property. If from what was said by him, A. O. Burch & Co. had manifested a disposition to purchase, it does not follow but that he would have communicated the fact to appellant's agent, and would have refused to sell without his consent, as he did when Horatio T. Taylor, Teegarden and Jenks applied to him in view of purchasing; and if they

had made an offer worthy of consideration, he doubtless would have reported it, as he did the offer which came from Chicago just before the transfer to Blake & Elliott (*record* p. 21).

But suppose Taylor had offered to sell the property as his own, could he in that way make testimony in favor of himself or those claiming under him?

3d. Testimony is offered to show the business habits and character of Isaac Taylor. Several witnesses are examined on the subject: Henry T. Fuller (*ante* p. 40); Albert G. Knight (*ante* p. 43,) and Henry S. Durand (*ante* p. 44). Mr. Durand expresses the general opinion, in characterizing him as "a very sharp, thorough, careful, exacting, cautious, but a very honorable and honest business man."

The deed of Taylor to Clement, of July 7, 1862 (exhibit 1, *record* p. 217), was offered, as we presume, for the purpose of being used in connection with the testimony concerning Mr. Taylor's business habits and character.

It may be urged that it is *improbable* that such a man as Mr. Taylor is described to have been, would make agreements of this kind without having the rights and obligations of both parties clearly defined by instruments in writing. Prior to the surrender, he held the bond and mortgage of appellant, in which the rights of both parties were clearly defined. In

procuring the surrender, being "sharp" and "exacting," he secured an instrument in writing, defining his own rights and the obligations of Howland; but, being "careful" and "cautious," he abstained from signing any writing which should define Howland's rights or his own obligations. At the time the second agreement is claimed to have been made, pending the foreclosure suit, Taylor's rights and Howland's obligations were all evidenced in writing, and Taylor having succeeded in inducing Howland to waive a defense to the suit, upon his promise to perform the prior agreement, there was no more occasion than before for Taylor to put his own undertaking in writing. Taylor being "a very honorable and honest business man," his word seems to have been considered by both parties as sufficient for the purposes of the transaction.

It may be said that, if Taylor had supposed Howland had any interest in the property he would not have executed the deed to Clement; that, being "careful" and "cautious," he would not have bound himself by covenants of warranty; and being "honorable and honest," he would not have taken as his own the consideration of one thousand dollars named in the deed. This deed was executed between two and three weeks after the sale. It was a conveyance of the strip of ten feet which Howland had conveyed

to him before the sale, for the purposes of an alley for the use of Clement's building and the Howland block, in common. It also gave certain other rights, specified in the deed. The deed was made, as stated by Mr. Knight, who drew it, in pursuance of a previous agreement not recorded, which "was carried into effect by the execution of the deed, and an agreement back to Mr. Taylor from Clement." (*ante* p. 43–4.) The agreement of Clement bears the same date as the deed, recites its provisions, states that it is given in consideration of the deed, and is made for the benefit of the Howland block. The terms of the previous agreement are not shown. The papers show on their face that no consideration was, in fact, paid for either. The instruments were each the consideration of the other. It is apparent from the testimony of Knight, in connection with the papers themselves and the deed from Howland to Taylor, that the prior agreement referred to was executed before the sale, as part of the arrangement by which Howland conveyed to Taylor, and in contemplation of Taylor's becoming the purchaser at the sale. If not, why did the parties execute the prior agreement? Why not make the deed and "agreement back" in the first instance?

The objection as to Taylor's covenants are equally applicable to the deed to Blake and Elliott. Can any

inference be drawn from these covenants tending to disprove the existence of the agreement? We think not. Taylor had a perfect legal title of record, but subject to a parol defeasance. He may have supposed, and probably did, that his legal rights were fixed by the judgment and deed, and that Howland had no interests in the property that could be established as against his legal title, but that such interests depended wholly upon the question whether he, Taylor, should or not, see fit to perform his verbal promise. We think this was a mistake on the part of Mr. Taylor; but it was a mistake of *law*, and not an unnatural one for such a man as Taylor to make. Even opposing counsel now assert, and the learned circuit judge held, such opinion to be the law of the case. Whether Taylor was right or wrong as to the legal obligation of his verbal agreement, we submit that the testimony shows he intended to perform it, and that both the deed to Clement and that to Blake and Elliott were given in pursuance of such intention, and with the consent and by the procurement of Howland.

Suppose, however, this is not the fact, and that Taylor asserted absolute ownership of the property, and that he intended to convey it discharged of the parol defeasance, would such acts be held legitimate evidence to show the agreement had not been made? If so, the fact that Blake and Elliot now assert an

absolute title would constitute such evidence. Can one in that manner make evidence in his own favor or in favor of those claiming under him?

Such is the evidence relied upon to rebut the case as made by appellant. We submit that it is insufficient to impair, in any manner, the proofs produced in support of the bill, and that the agreement of Isaac Taylor is established as alleged.

II.

The testimony fully establishes the alleged agreement under which appellees took the property from Isaac Taylor.

R. W. HOWLAND, testifying as to the transfer, says:

"It was made by arrangement between myself, Mr. Taylor and Mr. Blake. I made an arrangement with Mr. Blake a day or two before that, to arrange with Mr. Taylor for Mr. Blake to carry the trust or the property, instead of Mr. Taylor. Mr. Taylor did not want to carry it, because he didn't want to be annoyed with tenants. That was one reason, and another was, that he wanted to move his business to Chicago. Mr. Taylor wanted me to procure some one to take his place, and I went to Mr. Blake for that reason."

Q. State why you went to Mr. Blake to get him to

do it; what had been your relations with him, and the relations of your family with him before that time?

A. I went to him because he had been talking of carrying it for the last ten (10) months before that. My relations with Mr. Blake had always been friendly, and my family relations were also friendly to him. At that time I had been in his employ for nearly two years, and was in his employ then, and was in his employ at least five years after that. My wife was brought up in Mr. Blake's family for four (4) years previous to our marriage, and we were married at his house. (p. 19.)

Witness then gives the testimony stated at p. 28 *ante*, as to the negotiation between himself, Blake, Isaac Taylor and Sheriff Taylor, which took place about the time of the sale, and adds:

"I also made a very similar arrangement with Mr. Blake and Mr. John W. English in December of the same season, and that also fell through. There was no other arrangement until this final arrangement with Mr. Blake about two days before the transfer was made. The arrangement with Mr. Blake differed in only one respect from the others—that there was no definite time fixed. I also agreed that I would not trouble or annoy him in any manner, but would let it run until the property paid for itself. That is all I recollect at present."

Q. At the time you made this arrangement with Mr. Blake do you know whether he understood fully the terms under which Mr. Taylor had been carrying the property, and, if so, state what the fact is?

A. I think he must, because we talked it over between ourselves, and there was no misunderstanding. (p. 19).

Witness further testifies that a conveyance was

made by Taylor to appellees in pursuance of this arrangement with Blake; that the amount paid on receiving the conveyance was about $10,000; that this was just the amount due Taylor from appellant, as he understood it; that in making the arrangement with Blake the rents were to go to liquidate the indebtedness of the property; that he was to keep an account of the earnings of the property, and also of the expenses and disbursements; that when the debt was paid he was to re-convey it to appellant. (p. 20.)

Witness further says that he had a similar arrangement before that time, in relation to other property, with Mr. Blake.

"It was a brick yard property, on the lake shore, some five miles from Racine. In the spring of 1860 he bid on (in) this brick yard property at Sheriff's sale by an arrangement very similar to this, and was carrying it at the time of this purchase. He carried it, I think, until the fall of 1867. I then negotiated a sale of the property, and he confirmed it, and conveyed the property according to my arrangement. I had a settlement with him at that time about it, and the sale a little more than balanced the indebtedness. He paid the balance over to me. Mr. Blake paid the taxes from the time of the purchase at sheriff's sale down to the time of the settlement above mentioned." (p. 20.)

Witness further says, that shortly before he made this arrangement with Blake, in reference to the

property in controversy, a proposition had been made for the actual purchase of the property.

"Mr. Isaac Taylor came and told me, that he had a proposition from Chicago to purchase the property, whereby there would be four thousand or five thousand dollars coming to the plaintiff; that is, the proceeds of sale would exceed the indebtedness about that amount. I objected to it on account of the amount being too small. He then urged me very strongly to get some one to take the property off his hands, and carry it instead of him, and recommended Mr. Blake." (p. 21.)

On cross-examination witness testifies:

Q. At the time of the transfer of the property to Blake & Elliott, or any time afterwards, did you know what kind of a deed Mr. Taylor executed to them?

A. I afterwards learned that it was a warranty deed, and understood it was to be that kind of a title.

Q. By whom was it so understood?

A. It was so understood at all previous arrangements, by myself, Mr. Isaac Taylor and Mr. Blake, and no other agreement was made as to the character of the deed.

Q. Where did you make the arrangement with Mr. Blake to take the property, about which you have testified?

A. I found him that morning in the rear of the shop, under an old shed. No one was present to my knowledge.

Q. Was all the talk between yourself and Mr. Blake on that day, about the property, had at that place?

A. That was the last and final conversation that I had with him before the purchase. I had several talks with him during the preceding year or ten months.

Q. Who was present at those several talks?

A. I can't mention names at present. I don't recollect

any one being present at any of the conversations, except Mr. Isaac Taylor and Mr. Horatio T. Taylor.

Q. In what year did you have the talk with Mr. Blake, under the shed?

A. It was in the year 1863, on the day or second day before the transfer from Isaac Taylor to Blake and Elliott. By the transfer, I mean execution of the deed from I. Taylor to Blake and Elliott.

Q. From the time of the execution of that deed until the time of bringing this suit, did you ever make any claim to the defendant, James T. Elliott, that the conveyance from Isaac Taylor to Blake and Elliott did not convey an absolute title without condition, or that it left any interest on (in) the property in your brother?

A. I never made any arrangements with Mr. Elliott. I never recognized him in the transaction, neither before nor since. I never had any talk with him about it,—never intended to.

Q. Did you know the deed from Isaac Taylor was made to Blake and Elliott?

A. I learned it after the purchase.

Q. How soon after the purchase?

A. As soon as I got in from the trip I was making at the time.

Q. How many days or weeks elapsed after the conveyance before your return?

A. Three or four days. (p. 27–8.)

He says as to the sale to Erskine of the brick yard property:

"I had a talk with Mr. Erskine, and supposed that I negotiated the sale, although Mr. Blake agreed to take 20,000 brick less than I agreed to take." (p. 30.)

On re-direct examination witness testifies:

Q. From the time of the conveyance from Isaac Taylor, to Blake and Elliott, were you personally familiar with the manner in which this property was occupied?

A. I was, and have been up to the present time.

Q. Have you known generally the amount of rents that have been paid by the different tenants from that time?

A. I have.

Q. Is there any special reason why you did not, from time to time after the execution of the conveyance to Blake and Elliott, inquire of them, or either of them, as to the income of the property?

A. There was.

Q. What was it?

A. Blake wished me to agree, in case he took the property, not to annoy him until it was paid for, and I did agree to it. That was the reason. (p. 30–1.)

H. T. TAYLOR says:

Q. Do you know what the relation was between the defendants in the spring of 1863, as to whether they were partners at that time, and as to whether they were related in any other way, and how?

A. They were partners in business, and they were brothers-in-law.

Q. Do you know the relation between R. W. Howland and the defendants at that time?

A. I think Mr. Howland was running a brick yard for Mr. Blake at that time—I don't know just how. I know that Mr. Howland's wife made her home with Mr. Blake's family for several years before her marriage (p. 34.)

On re-direct examination he says:

Q. In this transaction, did Mr. Blake appear to be the friend and adviser of Mr. Howland?

A. I so understood it. (p. 37.)

A. R. BURDICK testifies:

"I know the property known as the Howland block, in Racine. I heard of the transfer of the title of that property from Isaac Taylor to Messrs. Blake and Elliott, at about the time the transfer was made. Soon after I had heard of the transfer, I met Mr. Blake on the street in Racine."

Q. State whether you had a conversation at that time with him in reference to this property?

A. Yes, sir, I did.

Q. State what that conversation was?

A. I said to Mr. Blake, I understand you have bought the Howland block. He says, Yes, I have or have not. I have the papers for it, and Howland has the right to redeem it, or the chance, or something to that effect, and he (Blake) says he probably never will do it, or something of that kind. (p. 62.)

ALBERT P. DICKEY says he recollects the transfer from Taylor to Blake and Elliott.

Q. Soon after you heard of that transfer, did you have a conversation with Mr. Blake, in reference to the manner in which they took or held the title?

A. I did.

Q. Where did that conversation occur?

A. It was near my house, or Blake's shop, close by my house.

Q. State what the conversation was?

A. The conversation commenced in regard to brick.

Mr. Blake said he was lending or selling to Osborne and Osgood some brick, that they might complete their building. This conversation was in the spring of the year. I think it was some time in the first of May; and I says to Mr. Blake, I understand you have been helping Mr. Howland to pay for the building, and have taken Mr. Taylor's interest in it; and Mr. Blake said that Mr. Howland's wife had been dinging or teasing him to advance money to Mr. Taylor, to take it in the name of Blake and Elliott, and to become responsible to pay Mr. Taylor what there was going to him, and Mr. Blake said he had done it; and at the expiration of ten years, if the rents paid the taxes, and the interest and principal of the money, then it was to be deeded back to the Howlands. The word Howlands was used by Blake. Mr. Blake said that Howland was a hard-working man, referring to R. W. Howland, and industrious; and, on account of his wife, he wished to help him to save the property or something in it. I told Mr. Blake it was very kind in him, and Howland was a good fellow,and needed some one to assist him. I don't recollect any further conversation in regard to that at this time; but there was some more in regard to the Osborn and Osgood brick.

Q. Is that the substance of the conversation on that subject?

A. It is, as near as I can recollect.

Q. Soon after you heard of that transfer did you have a conversation with the defendant Elliott, in relation to the manner in which they took or held the property.

A. I did.

Q. Where did that conversation take place?

A. It was in front of the Howland block, near where you go up stairs into the building.

Q. State what that conversation was.

A. I think Mr. Eliott was doing some repairs on the building, or seeing to them, at the time of the conversa-

tion, and I said to him, "I understand you have an interest in this institution." Mr. Elliott's reply was, that they had paid Mr. Taylor his claim on the building, and purposed to help Howland try to redeem it. That is as far as I recollect the conversation. I didn't have but a few words with him. (p. 64–5.)

A. P. DUTTON says:

"I knew of the transfer of the title to that property from Isaac Taylor to Blake and Elliott at the time."

Q. Soon after you had heard of that transfer did you have a conversation with the defendant Blake in reference to the manner in which they took or held the property?

A. I had a conversation with Mr. Blake in reference to the sale of the property by Mr. Taylor to Blake and Elliott.

Q. Where did it take place?

A. At the post office, in this same block.

Q. State what the conversation was.

A. I was finding fault with Mr. Taylor, in my conversation with Blake, for selling the property. Mr. Taylor had told me what he was doing, and what he was going to do, with the property. I understood Mr. Blake to say that Mr. Howland was to have the benefit of the property, the same as if Mr. Taylor had held it. He spoke of his friendly feelings toward Howland, and thought that he was as safe a man to hold it as Isaac Taylor was. The exact words I cannot recollect at this time, as 'tis so long ago.

Q. Did he say anything about taking the property off of Taylor's hands?

A. I understood Mr. Blake to say he had paid Mr. Taylor's claims all up, or had assumed it, or something to that effect, and that when he got the money from the rents of the property, or otherwise, he would give it up

to Howland. That was my understanding of the conversation we had, and that he did it to help Howland. Mr. Blake asked me if I didn't think the property was as safe in his hands as in Isaac Taylor's. I think I can tell pretty well what my reply was. I had been charging Mr. Taylor with bad faith, and I expressed myself as pleased that it had got into Mr. Blake's hands.

Q. Did Blake appear to understand that you knew how Isaac Taylor had been holding the property?

A. I had repeated to Mr. Blake how I understood Mr. Taylor was holding it.

Q. How did you tell him that you understood Mr. Taylor had been holding the property?

A. I can't give the words exactly.

Witness then gives the testimony hereinbefore repeated at page 38, and adds:

"But I accused Mr. Taylor of bad faith in selling the property, until Mr. Blake told me how it was." (p. 67.)

JOHN W. ENGLISH says, in reference to an interview between him and Blake, about December 1, 1862:

Q. For what purpose did you go to Mr. Blake's place of business?

A. To see him in regard to making the negotiation. I had no other object in going to him.

Q. What took place at that interview between you and Mr. Blake?

A. After a salutation, I asked if Mr. Howland had spoken to him about my entering into the arrangement for the purchase of the property and carrying it for them for a certain number of years—either six or seven. He

told me that he had. He asked me how I wished to arrange the matter. I told him I had not thought much about it or the details of the arrangement, but Mr. Howland and I had talked about an arrangement for taking the property from Mr. Taylor and carrying it for a certain number of years. I asked Mr. Blake, what was the nature of the paper we were to give Mr. Howland —whether a bond for a deed, or articles of agreement. He said that neither was necessary; that his word was good with Howland, and they understood each other about the matter thoroughly. I told Mr. Blake I would have nothing to do with it, unless Mr. Howland's rights were all down,—stated on paper, so that I would know when his rights expired, and save future trouble. I think those were the words. I further stated that if I did anything about it, I would place the matter in Marshall M. Strong's hands, to see that everything was all right. Mr. Strong was a lawyer in Racine at that time. Mr. Blake said that he had a proposition to make to me that would suit me better, as I was not going to reside there. That he would take a deed of the property and give me a mortgage for what money I furnished, and then I would be perfectly safe, and he would be there where he could attend to it, and I could draw my interest. I refused to do that, and told him that my object in going in was to try and make more than simple interest out of it. And then I talked with him about the probability of the Howland boys not being able to come to time when the time for redemption arrived, and about the value of the property, &c. I declined to enter into the arrangement, and told him I would not enter into the arrangement unless I had the same title that he had, and he declined entering into the arrangement as I wanted it, and I then left.

Q. In this conversation with Blake did he represent

himself as the friend and acting in the interest of Howland?

A. Yes, sir; that was the reason he gave for not wishing the title partly in me, and for wishing to take the whole title in his own name. He expressed himself as if I might sell off my interest to some one else to speculate, or for some other reason. (p. 70.)

On re-direct examination he says:

Q. In your negotiation with Blake in reference to taking the title to the Howland block did he appear to understand how Isaac Taylor was holding the property?

A. Yes, sir; all our negotiations were based on the principle that he was holding it for Howland, and he was only going to transfer it to others.

Q. How?

A. For the same purpose. (p. 75.)

ELLEN M. HOWLAND says:

"I am the wife of R. W. Howland. Have been married 23 years. Prior to my marriage I was making my home at Mr. Blake's. I think I had made it my home between three and four years before that time. I recollect the circumstance of the Howland block being transferred from Isaac Taylor to Blake and Elliott. I should think it was ten years ago. I can't tell exactly."

Q. Did you have a conversation with Mr. Blake with reference to his taking the property, just before the transfer was made?

A. I did.

Q. How long before?

A. I think it was the same day that he made the arrangement with Mr. Taylor.

Q. Where did this conversation take place?

A. It was on the sidewalk very near Mr. H. T. Taylor's store.

Q. State what that conversation was as nearly as you can recollect it.

A. I met Mr. Blake on the street. I asked him if he had a talk with Mr. Howland before leaving. He said that he had, and I requested that he should take the property.

Q. State what was said by him and by you; give the language as nearly as you can.

A. I wished him to take the property rather than any other person. He said that he didn't think that Mr. Taylor would let him take it for just the amount of the mortgage. I told him I thought he would, for I had just had a conversation with Isaac Taylor about it, and Mr. Taylor said he would let him have it; and I told him if he didn't think so, I would go right with him and see Isaac Taylor about it. He said he would go and see Taylor first, and if he would let him have it he would let me know. I told him that at the time Mr. Howland left home he wanted me to see Mr. Blake about taking the property, as Mr. Howland had talked before he went away with Mr. Blake. Mr. Blake made answer that if he could make the arrangements with Mr. Taylor, as talked of, he would make the bargain; but I should promise him one thing, that was, not to annoy him about the property until paid for, or say any thing to him about it, because he thought Mr. Howland's salary would be all that he could do to take care of his family, as Mr. Blake knew he had had nothing for his services while he was at work there at the building. Mr. Blake knew we were very poor then, had nothing to live on, and I wished him to take the property, because I thought he was a good honest man, and he said he needn't expect any thing for Mr. Howland's services until the rents paid for the property

Q. Did he promise in that conversation to go and see Mr. Taylor on the subject and report to you about it? State what he said about it.

A. He told me that he would go and see Isaac Taylor, and he says now you go home, and I'll make the arrangement with Isaac Taylor, if he will do as you say he will; and he started, as I supposed, for Isaac Taylor's. At the time he told me to go home, he further said he would go and see Isaac Taylor and let me know what Isaac Taylor said before or by three o'clock, and let me know all about it.

Q. Did you see him again that day?

A. I did. He came back to our house, where we were living before that time, and said that he had made the arrangement with Isaac Taylor; and then I asked him how he had arranged with him. He said he took the property just for the amount of the mortgage, and was holding it till paid for, by the rents, I suppose.

Q. Was any thing said in that conversation about your troubling him?

A. There was.

Q. State what was said.

A. He said he wanted me to promise, as I did before, that I would say nothing about the property to annoy him until paid for.

Q. State whether you did promise him.

A. Yes; I did say I would not annoy him about it.

Q. Did Mr. Blake tell you any thing which he said Taylor had told him about your annoying him (Taylor)? If so, what was it?

A. Yes, he did; Mr. Blake said that Isaac Taylor said that he would get along with Richmond Howland, but I would annoy him about the property. (p. 81–2.)

SILAS F. LEFLER says:

"I knew at the time, by hearsay, that that property

was conveyed by Isaac Taylor to Blake and Eliott, and I heard it also from them afterwards."

Q. After that time did you have a conversation with the defendant, Blake, in reference to the manner in which they held the property?

A. I did.

Q. State what that conversation was.

A. I can't tell whether I asked him the question myself, or whether he told me voluntarily; but, at all events, he told me that Blake and Eliott were carrying that property, and signified that it would pay for itself, if the rents kept up, so that Howland, or the Howlands, would get it back in ten years or so. That is about the substance of his statement.

Q. Did you have a conversation after that time relating to this property, with Mr. Elliott?

A. I think I did not at that time, but heard him make a statement afterwards in Burch and Bruce's store. The conversation was principally with Frederick W. Bruce.

Q. State what that conversation was.

A. I think Mr. Elliot was in there, having a conversation with Mr. Bruce about the leaking of the roof, and also about the price of the rent. I recollect Bruce asked him what was his price for the building, or what it was worth, and he said it wasn't theirs to sell, but supposed it was worth $30,000.00, or it may be $35,000.00—at any rate, I thought it a high price; and he carried the idea that all they wanted at the time was the money they had in it, and stated what that was, namely, $9,600.00 or $10,000.00 at most, and then turned and went out. He had a little account book in his hand at the time, and carried the idea that he had to keep a separate account of his receipts and expenditures on that building. I don't know that he used those words, but that he had to keep a strict account with that building. My impression is that

I asked him why that was, and I understood from his answer that it was because of an agreement between the parties. (p. 85–6.)

TESTIMONY ON BEHALF OF APPELLEES.

JAMES T. ELLIOTT, one of the appellees, testifies:

Q. Did Lucius S. Blake and yourself purchase from Isaac Taylor the property known as the Howland block?

A. Yes, sir. We made the purchase in April, 1863.

Q. Where was the contract made for the purchase of the Howland block?

A. In the shop of Blake and Eliott.

Q. Who was present during the negotiations?

A. Mr. Taylor, Mr. Blake, myself, and Mr. Charles Bunce.

Q. Had you had any talk, about the purchase of the property, with Mr. Taylor prior to that time?

A. No, sir.

Q. Had the subject been talked between Mr. Blake and yourself prior to that time?

A. Yes, sir.

Q. State now what occurred between Mr. Blake, Mr. Taylor and yourself relative to the purchase.

A. Mr. Taylor asked us if we would buy the property. He gave us his price; what he wanted for it, and the terms of payment, and we concluded to take it.

Q. What price did he ask for the property?

A. $10,000.00.

Q. What were the terms of payment?

was conveyed by Isaac Taylor to Blake and Eliott, and I heard it also from them afterwards."

Q. After that time did you have a conversation with the defendant, Blake, in reference to the manner in which they held the property?

A. I did.

Q. State what that conversation was.

A. I can't tell whether I asked him the question myself, or whether he told me voluntarily; but, at all events, he told me that Blake and Eliott were carrying that property, and signified that it would pay for itself, if the rents kept up, so that Howland, or the Howlands, would get it back in ten years or so. That is about the substance of his statement.

Q. Did you have a conversation after that time relating to this property, with Mr. Elliott?

A. I think I did not at that time, but heard him make a statement afterwards in Burch and Bruce's store. The conversation was principally with Frederick W. Bruce.

Q. State what that conversation was.

A. I think Mr. Elliot was in there, having a conversation with Mr. Bruce about the leaking of the roof, and also about the price of the rent. I recollect Bruce asked him what was his price for the building, or what it was worth, and he said it wasn't theirs to sell, but supposed it was worth $30,000.00, or it may be $35,000.00—at any rate, I thought it a high price; and he carried the idea that all they wanted at the time was the money they had in it, and stated what that was, namely, $9,600.00 or $10,000.00 at most, and then turned and went out. He had a little account book in his hand at the time, and carried the idea that he had to keep a separate account of his receipts and expenditures on that building. I don't know that he used those words, but that he had to keep a strict account with that building. My impression is that

I asked him why that was, and I understood from his answer that it was because of an agreement between the parties. (p. 85–6.)

TESTIMONY ON BEHALF OF APPELLEES.

JAMES T. ELLIOTT, one of the appellees, testifies:

Q. Did Lucius S. Blake and yourself purchase from Isaac Taylor the property known as the Howland block?

A. Yes, sir. We made the purchase in April, 1863.

Q. Where was the contract made for the purchase of the Howland block?

A. In the shop of Blake and Eliott

Q. Who was present during the negotiations?

A. Mr. Taylor, Mr. Blake, myself, and Mr. Charles Bunce.

Q. Had you had any talk, about the purchase of the property, with Mr. Taylor prior to that time?

A. No, sir.

Q. Had the subject been talked between Mr. Blake and yourself prior to that time?

A. Yes, sir.

Q. State now what occurred between Mr. Blake, Mr. Taylor and yourself relative to the purchase.

A. Mr. Taylor asked us if we would buy the property. He gave us his price; what he wanted for it, and the terms of payment, and we concluded to take it.

Q. What price did he ask for the property?

A. $10,000.00.

Q. What were the terms of payment?

A. $2,500 down; $750 to be paid every six months, with interest at 7 per cent.

Q. After you concluded to take the property, what did you do then?

A. There was very little more said about the matter, although I asked him if the title was perfect, and he said it was.

Q. Did he or not furnish you with an abstract of title of the property?

A. Yes, sir, he did.

Q. When were the papers drawn?

A. The following day. (p. 125–6.)

He says at page 127 that he had no knowledge, or information from any source, that complainant had any interest in the property after the foreclosure sale, or was to have it back on any contingency.

On cross-examination he says Blake and he commenced business in 1858.

"We have continued in business together ever since, except that I sold out a part of my business to him in October, 1872. The fanning mill business I sold to him, so far as the manufacture of fanning mills is concerned, and the real estate owned by the firm connected with the fanning mill business, although I did not sell all of that. We still own the dock property together. We still own the Howland block property together."

Q. Who kept the books of the firm from the time you commenced business until you sold out to Blake, as you have stated?

A. I did.

Q. What did those books consist of?

A. Day book and ledger.

Q. Where are those books?

A. In Racine. (p. 128.)

Q. Have you kept an account of the rents received from that building since getting the deed from Taylor?

A. No, sir; not a book account.

Q. What kind of an account have you kept?

A. Part of the time we kept a book account. When I went to collect the rents I would look up the matter to see who had paid and who hadn't paid, and when I collected would deposit it and place the name opposite the amount on the bank book, or I would charge it to Mr. Blake or myself—whoever collected it.

Q. On what bank account did you deposit it?

A. Of Blake & Elliott.

Q. On what books did you deposit (enter) that, which was not deposited?

A. On the firm books of Blake & Elliott.

Q. Havn't you, during a part of that time, kept a special separate account of the rents received?

A. Yes, sir; since July 4, 1871, I should judge from an examination of the book; and on examining the book I find that Gorton & Snell paid $20.00 for rent of the cellar from January 16, 1873, to June, July or August, 1873, and it appears that he rented the cellar from that time until July, 1874, for $25.00. These entries are in the handwriting of Byron Blake, and are not indexed.

Q. You say you didn't keep any account of the rents received prior to that time?

A. We attempted to keep it on a memorandum for one or two years; I think it was two or three years after we had the building before we commenced; I don't recollect the exact time when we commenced.

Q. Didn't you keep an account of it from the time that you took the building for same (some) time?

A. No, sir, I think not.

Q. Didn't this memorandum, that you spoke of, contain a statement of the rents from the time you commenced receiving them?

A. I think not. I can't tell what time we did commence that book. My impression is that it did not date back to the beginning, but am not certain.

Q. How long did you keep the account on that memorandum book?

A. I can't tell. I was away from town a good deal. I made some of the entries; don't know whether Mr. Blake made any or not.

Q. What was the object in discontinuing the keeping of the account in that book?

A. I don't know of any reason. We then started a cash book and failed to keep that up. I don't know whether it was just at that time or not we commenced the cash book. We didn't keep the cash book more than a year or two—don't know that we did that long.

Q. Where was this memorandum book kept?

A. In our office—part of the time in the safe, and sometimes in the drawer.

Q. Where was the cash book kept?

A. In the safe part of the time, and in the drawer part of the time, I think.

Q. Where is that memorandum book now?

A. With our memorandum books and papers, I suppose. I don't know where the cash book is—suppose it is there too. I will produce the memorandum book and cash book if I can find them. (p. 132–3.)

Q. Do you know A. P. Dickey, of Racine?

A. Yes, sir.

Q. Did you have a conversation with him in reference to the arrangements under which you took the title of the property, after you took the deed?

A. No, sir; not to my knowledge.

Q. Didn't you have such a conversation with him after you took the deed, in which you said to him, in substance, that Howland was coming out all right with the Howland block; that you, or you and Blake, had taken it off from Mr. Taylor's hands, and were carrying it for Howland in his stead, and that as soon as the rents paid the indebtedness the property was to go back to Howland, or words to that effect?

A. No, sir. (p. 134.)

(This examination was prior to that of Dickey above given.)

On re-cross examination he says that for the $2,500.00 paid down, it is his impression they gave a note for it.

"Our firm note. I don't know where that note is now; I think it was not preserved." (p. 136.)

Q. Have you got the book that I asked you for, in relation to this Howland block property?

A. I have, and it is the book Mr. Blake has been examined on and called the pass book, and is hereto attached marked "exhibit 15."

Q. In whose hand writing are most of the entries in this book?

A. In mine.

Q. Were these entries made at about the time they bear date?

A. Some of them were, others were not.

Q. Which were not.

A. These are the dates that the rents became due, but they were seldom paid at the time. The post office rent was paid the day before it was due, the others were not,

and when they were entered they were entered as of the day they were due.

Q. In whose hand writing are the parts of leaves on the back part of this book where the principal part of the leaves have been cut out?

A. In mine, sir.

Q. Have you got the cash book?

A. Yes, sir.

Q. Is this the only cash book Blake & Elliott ever kept?

A. Yes, sir.

Q. When was it opened and closed?

A. It was opened by Mr. Blake September 24, 1860, and closed December 1st, 1861.

Q. When was this account book marked "exhibit 15" opened and closed?

A. The first entry on the credit side is April 18, 1863, and the last entry is October 1st, 1871.

Q. What is the last date in the book so far as it appears to have been kept as an account book with a debit and credit side to it?

A. December 1st, 1865, is the last credit. (p. 137.)

On re-direct examination he says:

Q. What is the first item in the book marked number 15?

A. It is money received of Isaac Taylor, April 21, 1863. He received the money from some of the tenants after he sold to us, and paid it over to Blake & Elliott.

Q. What were the entries on the leaves in the back part of the book that have been cut out?

A. The dates that the rents became due, and the amounts that each tenant was to pay.

Q. Do you know who cut the leaves out of the book?

A. I do not, sir. I didn't know that they were cut out

until I hunted up the book at the request of Mr. Hooker.

Q. On your direct examination you state that you think that you commenced keeping cash book after you left off keeping that book—what do you say about that?

A. I was mistaken about the date when I come to look at the cash book.

Q. For what purpose was that little book No. 15 kept?

A. I wanted to know what the building would cost us when we got it in good repair—it was in bad order when we got it. (p. 137–8.)

GEORGE Q. ERSKINE says:

"I know the brick yard property, near the city of Racine, that was once operated by Richmond W. Howland. I purchased that property in 1868, I should think; it was perhaps 1869. Mr. Blake negotiated the sale of the property to me. I have no recollection of having any talk with Richmond W. Howland about it." (p. 146–7.)

On cross-examination he says;

"I recollect of Mr. R. W. Howland operating that brick yard for several years prior to my purchase of it; but I think it was not operated at all during the year prior to the time I bought it. I bought the lumber connected with the yard, and a horse, about a year before I purchased the place of Mr. Blake, I think. I purchased the lumber and horse of Mr. Howland, I believe." (p. 147.)

CHARLES L. BUNCE says:

"I was present at a conversation between Mr. Isaac Taylor and Messrs. Blake and Elliott concerning a sale to them of the Howland block, in Racine. The conversation was held in the shop, in the second story."

Q. State what transpired and was said between the parties on that subject, at that time, so far as you now can remember the same.

A. Mr. Taylor came into the shop in the morning, came up stairs—Mr. Blake was not there—and he spoke to Mr. Elliott and said, "what about buying that property?" or, "how is it about buying that property?" Mr. Taylor said "I suppose Mr. Blake spoke to you about it." Mr. Elliott says, "how about the title?" Mr. Taylor says, "good." At that time Mr. Blake comes in. Mr. Blake and Mr. Taylor sat down on a saw horse near me, and Mr. Elliott went away to another part of the shop. Mr. Taylor then commenced figuring the rent of the building, and he figured the rent at $1,700.00. Mr. Taylor says to Mr. Blake, you see it is a good investment, setting aside the rise in the value of the property." They all then left the shop. I do not recollect anything else that was said. (p. 155.)

On cross-examination he says:

Q. Neither Mr. Blake or Mr. Elliott have at any time told you how they understood that conversation, have they?

A. Yes. Mr. Elliott did in front of the office.

Q. Did he state the conversation as he understood it, substantially as you have stated it here?

A. I can't tell you whether he did or not.

Q. Was there anything in the conversation as he stated it to you, as you now recollect his statements of it, which differs from the conversation as you have now stated it?

A. He stated some conversation as having taken place between him and Mr. Taylor, when Mr. Taylor first came in, that I didn't recollect.

Q. What was that?

A. In regard to the title, or what his title was.

Q. Is that all the difference?

A. I think it was. I don't think Mr. Elliott heard that part of the conversation between Taylor and Blake on the saw horse.

Q. Is there anything in the conversation, as you have stated it here, different from the conversation as Elliott stated it to you?

A. I can't tell you that there is; I don't recollect anything. (p. 157.)

On re-direct examination he says that in the conversation with Elliott, he then stated the conversation as he has now stated it, before Mr. Elliott told him his recollection of it. (p. 158.)

Lucius S. Blake, one of the appellees, in his direct testimony says, he didn't, to his knowledge, have any conversation with R. W. Howland about making the same kind of an arrangement with John W. English; and that after the sale on the foreclosure he never had any talk with H. T. Taylor and R. W. Howland, or either of them, about taking the property and carrying it for the benefit of Howland. He denies that he ever had any conversation with Isaac Taylor or R. W. Howland after the foreclosure sale about taking the title to the property for the benefit of complainant or R. W. Howland, or that he ever made any such arrangement; or that he knew Isaac Taylor had agreed to bid in the property for the benefit of complainant; or that the complainant claimed

Q. State what transpired and was said between the parties on that subject, at that time, so far as you now can remember the same.

A. Mr. Taylor came into the shop in the morning, came up stairs—Mr. Blake was not there—and he spoke to Mr. Elliott and said, "what about buying that property?" or, "how is it about buying that property?" Mr. Taylor said "I suppose Mr. Blake spoke to you about it." Mr. Elliott says, "how about the title?" Mr. Taylor says, "good." At that time Mr. Blake comes in. Mr. Blake and Mr. Taylor sat down on a saw horse near me, and Mr. Elliott went away to another part of the shop. Mr. Taylor then commenced figuring the rent of the building, and he figured the rent at $1,700.00. Mr. Taylor says to Mr. Blake, you see it is a good investment, setting aside the rise in the value of the property." They all then left the shop. I do not recollect anything else that was said. (p. 155.)

On cross-examination he says:

Q. Neither Mr. Blake or Mr. Elliott have at any time told you how they understood that conversation, have they?

A. Yes. Mr. Elliott did in front of the office.

Q. Did he state the conversation as he understood it, substantially as you have stated it here?

A. I can't tell you whether he did or not.

Q. Was there anything in the conversation as he stated it to you, as you now recollect his statements of it, which differs from the conversation as you have now stated it?

A. He stated some conversation as having taken place between him and Mr. Taylor, when Mr. Taylor first came in, that I didn't recollect.

Q. What was that?

A. In regard to the title, or what his title was.

Q. Is that all the difference?

A. I think it was. I don't think Mr. Elliott heard that part of the conversation between Taylor and Blake on the saw horse.

Q. Is there anything in the conversation, as you have stated it here, different from the conversation as Elliott stated it to you?

A. I can't tell you that there is; I don't recollect anything. (p. 157.)

On re-direct examination he says that in the conversation with Elliott, he then stated the conversation as he has now stated it, before Mr. Elliott told him his recollection of it. (p. 158.)

LUCIUS S. BLAKE, one of the appellees, in his direct testimony says, he didn't, to his knowledge, have any conversation with R. W. Howland about making the same kind of an arrangement with John W. English; and that after the sale on the foreclosure he never had any talk with H. T. Taylor and R. W. Howland, or either of them, about taking the property and carrying it for the benefit of Howland. He denies that he ever had any conversation with Isaac Taylor or R. W. Howland after the foreclosure sale about taking the title to the property for the benefit of complainant or R. W. Howland, or that he ever made any such arrangement; or that he knew Isaac Taylor had agreed to bid in the property for the benefit of complainant; or that the complainant claimed

any interest in the property after the sale. He says he didn't know at the time he made the bargain that Taylor had anything less than an absolute title in fee.

"He said that he had a title to the property and would give a warranty deed. He said he had paid up all the taxes, and the title was perfect in him." (p. 160–1.)

Q. Where was the bargain made between Mr. Taylor and Mr. Elliott and yourself?

A. At our shop in Racine.

Q. Who was present at the time the bargain was made?

A. Mr. Elliott, Isaac Taylor and myself, and it was in the room occupied at the same time by some of our workmen—two of them—Mr. Bunce and a man by the name of Thorkelson.

Q. Had Mr. Taylor proposed to sell you the property before you met at the shop?

A. Yes; the day before he spoke to me about it; I think he spoke to me twice about it.

Q. Did he give any reasons for wanting to sell the property, and what were they?

A. Yes, he did; he said he wished to invest his money in Chicago, where he was about building an elevator. (p. 161–2.)

He denies that he agreed to keep any account of the rents, repairs, insurance, &c.; or that he ever kept any such account. (p. 163.)

On cross-examination he says:

Q. Do you know S. F. Lefler, formerly of Racine, and now residing in Chicago?

A. I do.

Q. Was he formerly in your employ?

A. Yes, sir.

Q. When did he leave your employ?

A. I can't tell now—some years ago.

Q. Did you have a conversation with him, after you took a deed of this property, in reference to the manner in which you took the title, or were holding it?

A. I did not to my knowledge.

Q. Didn't you have such a conversation with S. F. Lefler soon after taking the title, in which you told him that you and Mr. Elliott were carrying the Howland block for Howland, and that he was coming out all right in a short time, or words to that effect?

A. I never had any such conversation with him.

Q. Do you know A. P. Dickey, of Racine?

A. I do.

Q. How long have you known him?

A. For 25 years.

Q. Did you have a conversation with him, after you took the title to the Howland block, in reference to the manner in which you took the title or in which you then held it?

A. I did not.

Q. Didn't you have such a conversation with A. P. Dickey at Racine soon after you took the title to this property, and didn't you say to him in that conversation that Howland was coming out all right with the Howland block—that you or your firm had taken it off from Mr. Taylor's hands and was carrying it for Howland in Taylor's place, and that as soon as the rents paid the indebtedness, the property was to go back to Howland, or words to that effect?

A. I did not, nor any similar conversation.

Q. Do you know J. W. English, formerly of Racine?

A. Yes, sir; I used to know him.

Q. Where did English go to when he left Racine?

A. I belive he went to Ripon, or near there.

Q. Didn't you have a negotiation with J. W. English after he removed to Ripon for a purchase with him of this same property?

A. I did not.

Q. Did you have a negotiation with him looking towards the taking of the title of this property of a similar character to the negotiation between you and H. T. Taylor?

A. No, sir; I never had any negotiation with him.

Q. Didn't you, while in such negotiation with J. W. English, and after the foreclosure sale to Isaac Taylor, say to him, in reply to this question which he asked you, "what will Howland have to show for his interest?" that your word was good with Howland; that you and Howland understood each other —or words to that effect?

A. I did not; never had such conversation with him.

Q. Nor any similar conversation?

A. No, sir; not with Mr. English to my recollection —never.

Q. Would you have recollected it if you had had such a conversation?

A. I think I should.

Q. How positive are you on that subject?

A. I don't think I ever had any negotiation with him on the subject of taking the property with him.

Q. If you had had such a conversation after the sheriff's sale, and before you took the title from Taylor, would you have remembered it?

A. I think I should.

Q. Do you know Mr. Burdick, of Racine, who is a brother-in-law of Mr. Charles Shaw, of Racine?

A. I do; have known him ten or fifteen years.

Q. Did you have a conversation with Mr. Burdick, after you had taken the title to this property from Taylor,

in reference to the manner in which you had taken it or held it?

A. I think I did not.

Q. Didn't you have such a conversation with Mr. Burdick, soon after you took the title from Taylor, in which you stated to him, in substance, that you or your firm, in one sense had, and in another sense had not, bought the Howland block; that you had advanced money on it for Howland, but that you did not think he would be able to redeem—or words to that effect?

A. I don't recollect of ever having any such conversation with him on the subject.

Q. Can you say, as a matter of fact, whether you did have such a conversation with him?

A. I say that I have no recollection that I ever did, and if I did I think I should have recollected it.

Q. Do you know A. P. Dutton, of Racine?

A. I do—have known him 25 years.

Q. Did you have a conversation with A. P. Dutton, after you had taken the title from Taylor of this property, in relation to the manner in which you had taken the title or in which you held it?

A. I did not. He is a man I have not been on terms with for years.

Q. Didn't you, in such conversation with A. P. Dutton, soon after taking the title from Taylor, say to him, in substance, that you or your firm had taken the property off Taylor's hands, and were carrying it for Howland in Taylor's stead, and that as soon as the rents paid the indebtedness going to Taylor, the property was to go back to Howland—or words to that effect?

A. I say, as I said before, I had no such conversation with him. Have not been on terms with him for years.

Q. Didn't you have a similar conversation with him?

A. No, sir; I don't think I ever spoke to him on the subject.

Q. Do you know Mrs. Richmond W. Howland?

A. I do.

Q. Did you have a conversation with her on the morning of the day or the day before you took the deed from Taylor, in reference to taking the title to the property, or about that time, and before you took the deed, and before you made the final arrangement with Taylor for the deed?

A. I don't recollect exactly when it was; but I recollect having conversation with her at my house about that time.

Q. Did you tell her in such conversation, in substance, that you would take the property of Mr. Taylor if he would let it go for the amount due him, and carry it until the rents would pay the indebtedness, or words to that effect?

A. I did not.

Q. Did you have any similar conversation with her?

A. I did; she asked me if I would not advance the money and take the property for them; I told her I would not do it.

Q. Didn't you promise her, in that conversation, and say to her, in substance, that you would go and see Mr. Taylor at once, and report at three (3) o'clock that afternoon at her house?

A. I did not, to my recollection.

Q. And didn't you that afternoon, in compliance with a promise you had made in the morning, report to her that you had completed an arrangement or agreement with Mr. Taylor to take the property, or words to that effect?

A. I think not.

Q. If you had done so would you have remembered it?

A. I think I would.

Q. Didn't you, in the interview at which you made this report to her, request her not to trouble or annoy

you in any manner about the property until it paid for itself, or was paid for, or didn't you make a similar request of her?

A. I made no such request.

Q. Didn't she, in that interview, after you had made such a request of her, agree, or promise, or say, that she would not trouble you in any manner?

A. I made no such request, and she made no such promise or agreement.

Q. Didn't you tell her, in that interview, that Mr. Taylor told you that you could get along with Howland well enough, but that she, Mrs. Howland, would be continually annoying him, or words to that effect?

A. No; I have no recollection of any such conversation.

Q. Didn't you tell her, in that interview, that you would receive money at any time and allow it on the debt, or words to that effect?

A. No, sir; Mr. R. W. Howland was owing me $600 or $700 dollars at the time. (p. 165–7.)

On re-direct examination witness says:

Q. State the conversation with Mrs. Howland at your house and who was present.

A. She came up to see if I would not buy the property, or advance the money, take the property, and hold it for a certain number of years. I don't recollect now the number. I told her, in that conversation, that I would not do it. I told her that Mr. Howland was owing me then on a similar arrangement for the brick yard, and that he had never paid me. I never would take any more property in that way; and that if Mr. Taylor would sell me the property I would buy it if I could get it for what it was worth. She then said it was lost to them, as Taylor was going to sell it to a party in Chicago, and that if I

would buy it, if there were anything made out of it she would rather I would make it than any one else. That was the drift of the conversation, and about all that was said at that time. My wife was present at this conversation, and I think our hired girl. (p. 167–8.)

On page 176 on cross-examination he says, in speaking of repairs:

"We had no idea of keeping any account of the work when it was done."

Q. Do I understand you to say that you had no idea of keeping an account of the work when it was done subsequent to the year 1865?

A. We kept no account of the work at any time when it was done; we put down—I see Mr. Elliott has put down—some work in the pass book as being done in 1865, and previously.

Q. Does the book purport to contain a statement of the items for repairs and expenses of that property, with the dates, from the day you took the property up to December, 1865?

A. I think it does in part.

Q. Doesn't it in whole?

A. I think that there might have been repairs made there that are not on the book, as I see that there is but one charge made on the book in my handwriting, for repairs. I do know that there was work done in 1865 that was not charged in the book.

(This examination was prior to that of Burdick, Dickey, Dutton, English, Lefler and Mrs. Howland.)

Frederick W. Bruce says in reference to the conversation, about which Silas F. Lefler testifies,

that he don't remember any such conversation; that he don't think that such a conversation was ever had between himself and Mr. Elliott in the presence of Mr. Lefler or any other person; that if he had ever had any such conversation he thinks he would be likely to remember it. He says he had a conversation with Elliott on the 24th or 25th of June, 1865, about the property and Mr. Howland's connection with it, which he gives as follows:

"Mr. Howland at that time was trading with us in the store, and had been for some time prior to that. He paid his account by orders from Blake and Elliott. It was about the time our rent was due, and Mr. Howland brought us an order from Blake and Elliott for $50.00. There was still a balance due on his account, over and above the $50.00, of $60.37, and I wanted Mr. Elliott to give an order, or allow it all to be charged up to Blake and Elliott. He objected, saying they had overpaid him, and I said I supposed they would pay any account that Mr. Howland might have and be safe, on account of the interest which Mr. Howland had in the building. After talking sometime he permitted it to be charged up, but told me it was the last they should be reponsible for, and that Mr. Howland had no interest whatever in the building." (p. 193.)

On cross-examination he says:

Q. Wasn't it Richmond W. Howland that had been trading with you, and against whom you had this account?

A. It was.

Q. Hadn't you understood from some source, prior to

the time of this conversation you have mentioned about R. W. Howland's account, that Blake and Elliott were holding the Howland block for the benefit of Howland?

A. I had such an impression. I can't tell what gave me the impression. I supposed that Howland had some interest in the building.

Q. May you not have got that impression from some conversation with Elliott, or some statement of his?

A. I might possibly, but don't think I did. I think the first time I heard Elliott speak about it was when he told me Howland had no interest in it.

Q. In what manner were these accounts of R. W. Howland paid by Blake & Elliott? Were they deducted from the rents?

A. They were settled by Blake and Elliott when we paid our rents. Howland's account was added to the account of Blake and Elliott, and the rent then deducted, if our account was the largest; if the rent was the largest, we paid the balance.

Q. How long had this arrangement continued prior to this conversation with Elliott you have mentioned?

A. I think nearly a year, maybe over a year.

Q. Didn't Lefler trade at your store?

A. He traded some with us. (p. 193–4.)

LUCIUS S. BLAKE, in his deposition taken subsequent to the depositions of Burdick, Dickey, Dutton, Lefler, English and Mrs. Howland, substantially denies the truth of their testimony so far as it is in conflict with his former deposition (p. 195–7).

JAMES T. ELLIOTT is recalled and substantially denies the truth of the testimony of Dickey and Lefler as to statements made by him (p. 198).

It appears by the testimony of E. O. Hand that Isaac Taylor died November 13, 1865 (p. 206).

Exhibit No. 15, defendant's account book, offered by complainant—separate—is entitled on outside of cover

"HOWLAND BLOCK ACCOUNT BOOK."

The account is opened as follows:

DR. HOWLAND BLOCK IN ACCOUNT WITH BLAKE & ELLIOTT, CR.

The first entry on the credit side is:

1863.			
April 18th.	First payment on purchase.....	$2,500	00
	Making papers and stamps to Strong & Fuller.....	6	80

The first entry on the debit side is:

1863.			
April 21st.	I. Taylor, for rent received by him.	$ 27	40

The credit side covers insurance, taxes, repairs, money paid Taylor on the notes, and discount on notes. The last item on the credit side is:

Dec. 1st, 1865.	Woodhouse in council room...	$ 10	00

The account is closed here as a debit and credit account.

Exhibit 11, p. 282, shows that Blake & Elliott gave Taylor ten notes of $750 each, payable at intervals

of six months, the last falling due five years after date, and all bearing interest annually at 7 per cent. except the thirty months' note, which did not bear interest.

If the title acquired by Taylor under the sheriff's deed was not absolute, but defeasible, his conveyance to Blake & Elliott, though in form a deed of the property, was in effect but an assignment of his mortgage interest, provided the grantees had notice in any way of the defeasance.

1 Jones on Mortgages, 255.
Halsey v. Martin, 22 Cal. 645.

Assuming, then, the right of redemption established as against the title of Taylor, the same right as against the title of Blake & Elliott follows upon proof that they took their deed with notice of the character of Taylor's title. But if the evidence is sufficient to support the averments of the bill as to the agreement under which they took the property, it would not only charge them with notice, but would be additional and independent proof of the defeasance in Taylor's title; and would also, upon the principle established by the cases of the character cited in *Reigard vs. McNeil*, 38 *Ill.* 406, referred to at page 25 *ante*, establish the right to redeem, regardless of the question whether Taylor's title was absolute or defeasible. Entertaining this view of the effect which

should be given to the alleged agreement with Blake & Elliott, we shall endeavor to satisfy the court that the agreement is fully established by the proofs.

The agreement was made, as we claim, between R. W. Howland, appellant's agent, Isaac Taylor and Lucius S. Blake. Taylor being dead, the direct proof as to the making of the agreement consists principally in the testimony of Howland and Blake; and their testimony is unfortunately in serious conflict. The testimony of Howland is explicit and positive. (See abstract of his deposition, *ante* p. 64–9.) He is squarely contradicted by Blake, who denies that he had any negotiations on the subject after the sheriff's sale, and swears that he obtained the deed from Taylor upon an actual purchase, without any notice that appellant had or claimed to have any interest in the property (*ante* p. 87–8). One of the principal questions of fact arising upon the testimony, is, therefore, one of veracity between these two witnesses. The answer being *without oath*, the question presented must be determined upon the testimony alone.

We believe Howland's deposition is not in conflict with any established fact in the case. It is in accord with, and is corroborated by, the testimony of all the other witnesses, except Blake, who testify upon the subject; whereas, the deposition of Mr. Blake will

be found to be in irreconcilable conflict with the testimony of several witnesses, upon the vital question at issue, and is wholly inconsistent with the general facts surrounding the case.

Soon after the transfer to Blake & Elliott, Mr. Blake stated without reservation to a number of persons that his firm had taken and was holding the property upon the same terms as the agreement testified to by Mr. Howland. He also, just prior to taking the deed, had an interview with Mrs. R. W. Howland on the subject, as sworn to by her, to the same effect. In December, 1862, he entered into negotiations for taking the property under a similar arrangement with John W. English, as testified to by both English and Howland. On his cross-examination Blake is questioned in reference to the statements he had made; also as to the interview with Mrs. Howland, and the negotiations with Mr. English, but he denies having made any such statements; he admits the interview with Mrs. Howland, but denies her version of it; he also denies having had any negotiations whatever in reference to taking the property with English. See his examination (*ante*, p. 88–93). The persons to whom he made the declarations, and also Mrs. Howland and Mr. English, are subsequently called as witnesses, and their testimony is in flat contradiction of that given by him. See the testimony of these witnesses:

A. R. Burdick (*ante*, p. 70); Albert P. Dickey (*ante*, p. 70–1); A. P. Dutton (*ante*, p. 72–3); John W. English (*ante*, p. 73–5); Ellen M. Howland (*ante*, p. 75–7); Silas F. Lefler (*ante*, p.77–9). R. W. Howland's testimony had been previously given (*ante*, p. 64–9). Blake is subsequently re-examined on the subject, and adheres to his original testimony, deliberately asserting the falsity of that given by all the other witnesses (*record*, p. 195–7).

It is respectfully submitted that the testimony of these witnesses, independent of any other proof, establishes the agreement beyond all controversy. Blake's own version of the interview with Mrs. Howland is clearly a confession of full knowledge on his part of the character of Taylor's title. It goes further. Mrs. Howland, in effect, says Blake agreed to advance to Taylor the amount of his debt, and to take the property as security for its re-payment; and that after making the arragement with Taylor he informed her he had done so. Blake admits that is what she asked him to do, but says he told her he "would not do it;" yet he did do it—at least he admits that he took the property from Taylor for a sum which appears to have been the exact amount due him or claimed by him to be due.

It is immaterial whether Mr. Elliott was personally a party to the agreement or not, as it was made by

Blake for the firm, the money advanced having been partnership funds, and as it is now claimed by Elliott that the property belongs to the co-partnernership (*ante*, p. 80 and 83, also exhibit 15). The proofs, however, show that he was a party to the agreement, or at least knew of and assented to it. His declarations to A. P. Dickey (*ante*, p. 71–2), and Silas F. Lefler (*ante*, p. 78), though denied by him, in connection with other evidence applicable to him and Blake alike, establish the fact.

By the terms of the agreement as stated by Howland, Blake was to keep an account of the earnings of the property, and of the expenses and disbursements (*ante*, p. 66). Blake denies that he agreed to keep any such account or that he had ever kept one (*record*, p. 163). Exhibit 15 is produced, which shows that such an account was kept, commencing on April 18, 1863—date of the deed—and ending on December 1, 1865. Neither Blake or Elliott is able to give any satisfactory explanation of this account—why it was kept or why it was discontinued. Their testimony on the subject is certainly equivocal. See Blake's testimony (*ante*, p. 94 and *record*, p. 163), Elliott's (*ante*, p. 81–5). See also deposition of Silas F. Lefler (*ante*, p. 78–9). Isaac Taylor died November 13 1865 (*ante*, p. 97). We say this account was kept for the reason that Blake had agreed to

keep it; and that, as it was discontinued so close upon the death of Isaac Taylor, it is fair to infer that the loss of Mr. Taylor's testimony on the subject of the agreement was the cause of its discontinuance.

At the time Taylor transferred the property to Blake & Elliott, as we shall show hereafter, it was producing an income in excess of taxes, insurance and repairs, at the rate of about $1,550 per annum, or ten per cent. on $15,500, and seven per cent. on upwards of $22,000. It appears that Taylor accepted for his interest in the property $10,000, of which $7,500 was in notes payable at intervals of six months, the last note falling due in five years after its date, all bearing interest at 7 per cent. except one on thirty month's time which was without interest (*ante*, p. 79–80 and 97). In view of these figures, is there any reason in the claim that the transfer was an actual sale? Would Mr. Taylor or any other "sharp" business man shift a security that was safe, and actually producing over $1500 per annum, to one no safer, and the income of which was by contract to be limited to less than half the amount? If this was an actual sale, what explanation can be given of the thirty months' note on which no interest was to be paid? Again, Taylor had just been offered $14,000 or $15,000 for the property as he stated to Howland (*ante*, p. 29). What "sharp" business man would refuse such an

offer, and immediately accept one of about two-thirds the amount?

R. W. Howland, in the management of this property, had been induced to put it in a position where the income from it must pay Taylor's debt, or the property itself be lost. Blake knew this; and, considering the relations between himself and Howland, who was in his employ, as well as his relations with Mrs. Howland, who had been a member of his family for several years, is it reasonable to suppose that when they were endeavoring to induce him to advance the amount of the incumbrance and take the property as security, he would have taken an absolute title to himself and thereby cut off the right of redemption which they were asking him to protect? He admits that he was carrying the brick yard property at that time, and that he had negotiated for taking this property in connection with Horatio T. Taylor, under similar arrangements. In his negotiations with Isaac Taylor and Horatio T. Taylor he acted as the "friend and adviser of Mr. Howland" (*ante*, p. 70). In his negotiations with English, he represented himself as the friend and acting in the interest of Howland (*ante*, p. 75). Are his relations to the parties and his previous negotiations consistent with his present claim?

It is claimed by appellees that the agreement under

which the deed was executed was, in fact, made at their shop, between themselves and Mr. Taylor, in the absence of Howland. The testimony of Elliott (*ante*, p. 79–80), Blake (*ante*, p. 88), and Bunce (*ante*, p. 85–6), is relied upon to establish this claim, and the inference sought to be drawn is that Howland was not a party to the agreement. The testimony of these witnesses, however, shows that Blake and Taylor were negotiating prior to that time, and is not in any way inconsistent with, but is confirmatory of the other testimony on the subject.

An attempt is made to contradict our witness, Silas F. Lefler, by the testimony of Mr. Bruce (*ante*, p. 95–6). Lefler had testified to a statement made by Elliott, as to his connection with the property, in presence of himself and Bruce (*ante*, p. 78–9). Bruce says he does not recollect the conversation; but on cross-examination he says he had the impression that Blake and Elliott were holding the property for the benefit of Howland; he "supposed Howland had some interest in the building;" he could not tell what gave him the impression, and says he might possibly have got it from conversation with Elliott, but don't think he did. The statement of Elliott, as testified to by Lefler, being in accordance with what the witness supposed the fact to be, it could hardly be expected to have made any particular impression

offer, and immediately accept one of about two-thirds the amount?

R. W. Howland, in the management of this property, had been induced to put it in a position where the income from it must pay Taylor's debt, or the property itself be lost. Blake knew this; and, considering the relations between himself and Howland, who was in his employ, as well as his relations with Mrs. Howland, who had been a member of his family for several years, is it reasonable to suppose that when they were endeavoring to induce him to advance the amount of the incumbrance and take the property as security, he would have taken an absolute title to himself and thereby cut off the right of redemption which they were asking him to protect? He admits that he was carrying the brick yard property at that time, and that he had negotiated for taking this property in connection with Horatio T. Taylor, under similar arrangements. In his negotiations with Isaac Taylor and Horatio T. Taylor he acted as the "friend and adviser of Mr. Howland" (*ante*, p. 70). In his negotiations with English, he represented himself as the friend and acting in the interest of Howland (*ante*, p. 75). Are his relations to the parties and his previous negotiations consistent with his present claim?

It is claimed by appellees that the agreement under

which the deed was executed was, in fact, made at their shop, between themselves and Mr. Taylor, in the absence of Howland. The testimony of Elliott (*ante*, p. 79–80), Blake (*ante*, p. 88), and Bunce (*ante*, p. 85–6), is relied upon to establish this claim, and the inference sought to be drawn is that Howland was not a party to the agreement. The testimony of these witnesses, however, shows that Blake and Taylor were negotiating prior to that time, and is not in any way inconsistent with, but is confirmatory of the other testimony on the subject.

An attempt is made to contradict our witness, Silas F. Lefler, by the testimony of Mr. Bruce (*ante*, p. 95–6). Lefler had testified to a statement made by Elliott, as to his connection with the property, in presence of himself and Bruce (*ante*, p. 78–9). Bruce says he does not recollect the conversation; but on cross-examination he says he had the impression that Blake and Elliott were holding the property for the benefit of Howland; he "supposed Howland had some interest in the building;" he could not tell what gave him the impression, and says he might possibly have got it from conversation with Elliott, but don't think he did. The statement of Elliott, as testified to by Lefler, being in accordance with what the witness supposed the fact to be, it could hardly be expected to have made any particular impression

on his mind, and it is not unnatural that, after the lapse of nine years, he should have been unable to recall it.

Mr. Bruce also says that, in 1865, Elliott told him Howland had no interest whatever in the building. Bruce was endeavoring to have Elliott give him an order for the amount of a private bill against R. W. Howland, or to allow the account to be charged up to Blake & Elliott, to be deducted in settlement of rents, and said to him he "supposed they would pay any account that Mr. Howland might have and be safe, on account of the interest which Mr. Howland had in the building" (*ante*, p. 95–6). The question being thus presented of charging a personal debt of R. W. Howland upon this property, and the claim being made that it was properly so chargeable, Mr. Elliott, knowing that Eugene Howland was the owner of the property, naturally made the statement testified to by the witness. No doubt Mr. Bruce, as is the case with several other witnesses, knowing R. W. Howland as the person who had constructed the building and was identified with it, and not knowing the fact that he was acting as the agent of his brother, who was a non-resident, supposed he was the real party interested in the property.

Upon the whole evidence we submit that the agreement under which it is alleged Taylor conveyed, is

proven, and that the right to redeem, as against the title of appellees, is established.

THE VALUE OF THE PROPERTY.

R. W. HOWLAND, a witness on behalf of appellant, says: "the whole expense of erecting that building, as near as I can recollect, was about $24,000.00" (p. 16).

"The annual rent before I surrendered possession, I think was about $2,200.00" (p. 16).

LUCAS BRADLEY, an architect and builder, made an estimate of the cost of the construction of the building as of the time it was constructed, and testifies that the cost according to the estimate was $21,100, including outbuildings and drain (p.44).

THOMAS H. DAVIS, a carpenter and builder, examined the building in connection with Bradley, for the purpose of making an estimate of its cost at the time of its construction. He says that he made such estimate, and that the cost of the building according to the estimate was "some trifle over $21,000.00," and that he considered that a fair estimate of its cost. He also says that he thinks "the lot ought certainly to be worth $5,000.00;" and he thinks the building and land in the spring of 1863 was fairly worth $26,000.00 (p. 52).

WM. H. JENKS says he thinks the Howland block in 1863 was worth $20,000.00 to $24,000.00 according to his judgment of the price of real estate at that time (p. 37).

M. R. TEEGARDEN, who applied to Taylor to purchase the property, gives the opinion that in 1863 it was worth from $18,000.00 to $20.000.00; that he had made up his mind to give $18,000.00 for it, and would have given it, if he could have got the time Mr. Ben-

nett said he could. He says Mr. Bennett figured up the rents and advised him to buy it, if he could get it for that sum (p. 42).

JOHN W. ENGLISH says that in his interview with Blake they talked about its being worth from $17,000.00 to $20,000.00 in time paper (p. 70).

HORATIO T. TAYLOR says in his interview with Blake, hereinbefore given, "we talked about what the property was paying—the way it was rented. In speaking about the investment it came up between us that the property was paying 10 per cent. on $18.000.00 gross. I don't recollect which one of us said it, whether I said it to him, or he to me" (p. 78).

TESTIMONY ON PART OF APPELLEES.

ELBRIDGE G. HUGGINS says property was very low in June, 1862—about as low then as at any time; thinks the property was worth about $7,000, perhaps $8,000; don't think a man could have been found at that time to have paid 88,000 in cash for it. Business property in that block in the years 1862 or 1863 would not sell for its cost. I don't think there was any demand for real estate in those years, or any capital seeking invesment there in real estate (p. 99).

He thinks business property in Racine in 1862, 1863, and several subsequent years, ought to have produced a gross income of 25 per cent. in order to make it a profitable investment (p.101).

JOHN H. PALMETER says 88,000.00 or $10,000.00 was about the market value of the Howland Block in 1863 (p. 102).

On cross-examination he says that during 1862 and 1863 real estate on Main street should have brought 15 or 16 per cent. in rents to have made it a good investment.

He says no part of the Howland block was ever vacant from the time it was first rented, to his knowledge and belief, but thinks the room occupied by Booth was vacant for sometime after he moved out; can't tell whether that was before or after Taylor took it (p. 103).

HENRY T. FULLER says that the real estate market in Racine between 1858 and 1866 "was in a depressed state. There were very few sales, and those that were made were at a very reduced price from what property had been held prior to that time" (p. 110).

In referring to the amount bid at this sale—$9,300.00—he says, "my impression is the property could not have been sold for that at that time" (p. 112).

THOMAS J. EMERSON says the condition of the real estate market from 1857 and '58 to 1865 was extremely depressed; that there was little or no sale for it. He says: "I think the records will show very few sales of real estate in Racine, except forced sales, up to 1864." That the sale to Blake & Elliott was one of the first sales of any note after the panic of 1857, and he thought it a remarkable sale; that the sum it brought—$10,000—was a great deal more than he should consent to have given for it; that he considered it then, and does now, a chance sale; that he thinks it sold high, and if the property had been his he don't think he could have got as much out of it as Mr. Taylor (p. 115–16).

On cross-examination witness says that during the years 1862 and 1863 fifteen per cent. would have been a fair rate for real estate on Main street to have brought, as rent, to have made a good investment; and that real estate that pays 10 per cent. over and above taxes, insurance and repairs, is considered very fair property (p. 117).

HERMAN WARNER says, from 1855 to 1860, and from 1863 to within the last three years, he was engaged in selling, renting and dealing in real estate in Racine; that from 1859 for six or seven years the condition of the real

estate market was very poor; that from 1859 to 1864 or 1865 property would not sell for more than one-third or one-half its cost; that he discontinued the business during the years 1861–2 and '3 for the want of business, there being no sales of any amount; that during the years 1862–3 there was no market value hardly to any property, excepting to sell for what you could get; that he should think $10,000 all a man could sell this property for at that time; that the central point for business in Racine is that block and the opposite, on Main street, between 5th and 4th streets (p. 118).

On cross-examination witness says there was no property sold, except on foreclosure or at forced sales, and that the price which property brought on foreclosure or forced sale at that time, is the basis on which he makes his estimate of what this property could have been sold for; and that when he said the selling price was not more than one-third or half the cost, he had reference to the same basis (p. 119).

On re-cross-examination he says that during the years 1862 and 1863 he did not know of any other business property being sold there, except on forced sale or foreclosure sale (p. 120).

GEORGE BULL says there was quite a decline in value and rents in Racine in those years after 1857; that he don't think he could give a statement as to the value of the Howland block in 1862 and 1863 (p. 121).

On re-cross-examination he says he should think that somewhere in the neighborhood of 13 to 14 per cent. of gross income should have been received as rent to have made a good investment (p. 123).

FREDERICK W. BRUCE says, on cross-examination, that the stores and offices in the Howland block have been continuously occupied since it was first built, with some little exception; that he don't know of any store that has been vacant since 1863, but thinks for a portion of the

time one office has been vacant that is now occupied; thinks the office occupied by Bennett & Ullmann was vacant for a time after they left it; couldn't say how long (p. 124).

JAMES T. ELLIOTT says he thought they paid all the property was worth; that there had been, and was at that time, great depression in real estate at Racine; that the rent which the property produced at the time they purchased it was: "Post office $200 per annum; Burch, $330; Weeks, $300; Paine & Millett, $125; Lyon & Adams, $100; Bennett, $112.50; Smith & ——, painters, $51.20; McDonald, $75.00; Sandford & Tapley, $200; city of Racine, $80.00; Masonic Hall, $200. Total, $1773.70. The $51.20 from Smith & ——, painters, was not paid" (p. 128).

On cross-examination he produces a statement of rents, claimed by him to have been the amounts received for the time appellees had held the property.

This shows receipts for balance of the year 1863,	$1335 61
For 1864	1768 48
For 1865	1825 73
For 1866	1789 36
For 1867	1945 82
For 1868	1534 50
For 1869	2030 00
For 1870	2027 00
For 1871	2148 75
For 1872	2239 75
And for part of year 1873—until July	1020 00

(exhibit 16, p. 138.)

Witness also furnishes statements of amounts claimed to have been paid for taxes in same years, from which it appears that for 1863 the amount paid for taxes was $72.28, and for insurance on $10,000.00, $100.00. Both taxes and insurance increase, according to these

statements, in subsequent years. (Exhibits 17 and 18, p. 141.)

JOHN KRANZ says property in that block was not salable in 1862 and 1863. "Real estate was not in a prosperous condition then." He also states that it was difficult to raise money on real estate in those years, from 1861 to 1864 (p. 143.)

ALBERT G. KNIGHT, real estate, loan agent, and abstracter, says: "It is hard to say what the market value was, there was so little sale of property in that locality at that time. I think the general opinion was that the Howland block was worth about $12,000. I recollect when Mr. Taylor purchased it for $9,000, I thought it was about as much as I would be willing to give for it. When I say that $9,000 was as much as I would have given for it, I mean that it was as much as I would give for it, with a view of selling it, or as much as a man could afford to give with a view of selling it" (p. 144).

On cross-examination he says he thinks the value of the property in 1862 and 3 as an investment, depended principally on the amount of rents it would produce; and that it should have produced, in his opinion, during those years to have made it a good investment at $12,000, "about $1,500 perhaps" (p. 145).

On re-direct-examination he says that after deducting taxes, insurance, and repairs, the rent which should be realized in order to make the property a profitable investment at $12,000, would be about $1200 (p. 145–6).

HENRY S. DURAND says that in 1860, 1861, 1862 and 1863, "there was no demand for real estate, business property particularly, for investment—and if sold at all, it was sold at very low prices—very much less than the improvement cost if it was improved property. It was difficult to sell at all for cash" (p. 150).

He thinks the fair and reasonable value of the Howland block property in April, 1863, for investment at a cash

sale, "would range from $8,000 to $12,000, depending in his judgment upon other interests which a purchaser might have had in the city." He says: "I heard at the time what it sold for. It did appear to me at the time that it was comparatively a full price."

Q. How did its value at that time, in your opinion, compare with its cost?

A. The cost of such property had fluctuated since that building was built. If built in the early part of 1857, it cost, I should think, about the same as it would in 1862 or 1863; but I think such a building could have been built in 1862 or 1863 for about $16,000 (p. 151–2).

On cross-examination he says, that to have made a good investment at $10,000 cash, in his opinion, "property at that time used for the purposes then used as the Howland block was, should have a prospect of a permanent rental of from $2,500 to $3,000 with taxes and insurance, wear and tear" (p. 153).

The record shows a large amount of testimony on part of appellees as to the character of other property in the neighborhood of that in dispute, and especially upon the question of the relative value for business purposes of the property on each side of the street on which the Howland building fronts. This testimony shows that the block in which this building is located, and that opposite in the corresponding block, were in the business center of Racine; that the property on the opposite side of the street was the more desirable for general business purposes and commanded higher rents than that on the side where this property is situated.

A large amount of testimony was also offered by appellees as to repairs made on the building since they took possession. But we presume this will not be deemed material for the purposes of this appeal, except, perhaps, to show the condition of the building in respect to repairs at the time of the transfer. We refer merely to exhibit 15—

separate—"Howland Block Account Book," which purports to contain a statement of the repairs from April 18, 1863 to December 1, 1865. It appears from this account that in 1863, after April 18, the repairs amounted to $47.22. It also appears from the account of Isaac Taylor (*ante*, p. 36–7) that the repairs for 1863, prior to April 18, amounted to $6.62, making for the entire year $53.84.

It appears that the actual cost of constructing the building was about $24,000. It might have been constructed, according to the estimate of builders, at about $21,000. The lot, independent of the building, was worth $5,000. Upon the basis of the cost of construction and the value of the lot, the property was worth at least $26,000. The opinions of the witnesses as to its value, or what it could have been sold for, at the time of the transfer to Blake and Elliott, are wide apart. The income which it actually produced, we presume, would be a better test of value than these opinions. The property was rented at that time for $1773.70; the taxes for the same year were $72.28; the insurance, $100 (*ante*, p. 111); and the repairs amounted to 53.84 (*ante*, p. 114). The net income, therefore, at the time of the transfer was at the rate of $1,547.58. These figures, in view of the depressed condition of real estate and of rents at the time, show the true value of the prop-

erty to be very largely in excess of the sum for which appellees claim to have purchased it.

TAX DEEDS AND SALE ON MECHANICS' LIEN.

R. W. HOWLAND says:

"At the time of the sale I think all the mechanics' liens had been settled with Mr. Taylor" (p. 25).

He says as to the deed to Rhodes based upon one of the mechanics' liens, "Mr. Taylor told me he controlled that. He controlled it before he commenced the foreclosure" (p. 26).

HORATIO T. TAYLOR says, as to the sale to Rhodes in the mechanics' lien suit, he recollects making the sale while he was under sheriff, in May, 1860; that the amount of the purchase money was $1,000; that the amount due on the judgment at that time including costs on sale was about $750; that the property was bid off by Henry T. Fuller in the name of Daniel P. Rhodes; that the purchase money was not paid to his knowledge; that after making his report of sale he drew a receipt for the money and had Strong & Fuller sign it; that the surplus was not paid into his hands; that "there was an understanding about it; it was that it was Isaac Taylor's matter, and he would fix it up with the attorneys in some shape" (p. 76–7).

On cross-examination he says as to the interview between himself and Mr. Fuller, "I couldn't give the words now, but the idea conveyed to me was that Isaac Taylor was the real purchaser, or the man who paid up the lien, and for some reason it was bid off in the name of Mr. Rhodes. From the confidence I had in the law firm of

Strong & Fuller, I made my report as if the surplus moneys were paid in, although they were not actually paid" (p. 81).

HENRY T. FULLER says on cross-examination that Taylor and Rhodes were intimate personal friends; that Rhodes was one of the executors of Mrs. Taylor's will, and was not present at the sale. He says "my memory is that I bid off the property in his name. I think Mr. Taylor paid me the purchase money in the office, or settled it with Wiltsey and Hetrich at or about the time of the sale. I saw instructions giving me either authority or permission to bid it off in Mr. Rhodes' name" (p. 114).

LUCIUS S. BLAKE says Taylor "said he had paid up all the taxes and the title was perfect in him" (p. 161).

The order of reference made in the foreclosure suit, directed the referee "to ascertain the amount due the said plaintiff for moneys paid by him in satisfaction for tax liens on said mortgaged premises for the purpose of protecting his mortgaged interests; to ascertain if there are now any liens upon said mortgaged premises for taxes or assessments" (p. 251).

The endorsements on the bond secured by the mortgage are as follows: "received Racine, January 15th, 1859, all interest money due on this bond, or becoming due up (to) the twenty-first day of January, 1859.

I. TAYLOR."

"Received, Racine, Nov. 22d, 1859, two hundred and sixty-five dollars to apply on interest."

"$734.66. Racine, January 1st, 1862, received on this bond by excess of rents over disbursements to this date seven hundred and thirty-four and sixty-six one-hundreths" (p. 254).

On January 29, 1859, appellant made a surrender of part of the building by an assignment of the lease which had been given of the same (*exhibit* B. p. 57).

The tax deeds offered by appellees are exhibits 5, 6 and

7, at pages 226–30; the first runs to Rhodes and the others to Taylor, and all bear date Nov. 15, 1859.

Exhibit 3, p. 221, is the sheriff's deed to Rhodes on judgment for mechanics' lien. It is dated May 22, 1860.

Exhibit 4, p. 225, is the deed from Rhodes to Taylor. It is a quit-claim deed, dated July 23, 1862, in which the consideration recited is one dollar.

The testimony shows that the taxes and mechanics' lien on which deeds were given were in fact paid by Isaac Taylor. But it is immaterial whether he paid them or not; it was his duty to have done so. He was mortgagee in posession, receiving the income of the property, and could not acquire or set up an adverse title to bar his mortgagor's right to redeem. He could hold such title only in trust for the mortgagor's benefit.

Isaac Taylor never had or claimed possession, or any other right in the property, except under appellant's mortgage; and a purchaser from him, with notice, could acquire no greater estate.

In conclusion, we claim that appellant has shown himself entitled to redeem, according to the prayer of his bill. Whether the evidence is to be governed by

the rule applied by this court to dealings between mortgagor and mortgagee, resulting in the release of the equity of redemption by voluntary conveyance, under which "every doubt will be resolved against" the mortgagee, or by the strict rule indicated by the learned circuit judge, under which the order of things is to be reversed, and every doubt resolved against the mortgagor, we deem it immaterial, for the reason that, in our judgment, the proofs leave no room for doubt.

Respectfully submitted.

L. S. DIXON,
Counsel for Appellant.

UNITED STATES CIRCUIT COURT.

EASTERN DISTRICT OF WISCONSIN.

EUGENE HOWLAND,
vs.
LUCIUS BLAKE, and
JAS. T. ELLIOTT.

OPINION OF THE COURT, BY JUDGE DRUMMOND.

The facts of this case may be briefly stated: Eugene Howland was the owner of a block in the city of Racine, which he mortgaged to Isaac Taylor, to secure a loan made to him by Taylor.

The mortgagor, or rather his agent and brother, Richmond W. Howland, who seems to have acted for the plaintiff, not only in the purchase of the property, but in the construction of the building which was put upon it, and also in connection with the loan, came to the conclusion that the loan could not be paid except by the rents of the property; and Mr. Taylor was put in possession with a view of receiving the rents and profits, and so paying for the loan. This was done under a written contract or "minute" of possession. Mr. Taylor accordingly took possession, leased the property, received the rents, paid the taxes and insurance, and took general charge of the property.

The loan matured and was not paid. The arrangement was, when Taylor took possession, that when the money was paid, the property should be re-conveyed to the plaintiff. It not being paid at maturity, Taylor instituted

proceedings to foreclose the mortgage. While they were pending in the state court, it is alleged that an arrangement was made between the brother of the plaintiff and Mr. Taylor, by which, after the foreclosure, Taylor was to hold the property as before and collect the rents, and when an amount was received sufficient to pay the debt, the property was to be re-conveyed to the plaintiff. The whole of that arrangement is stated by Richmond W. Howland, and it may be proper to refer to his testimony. He states it as follows: "Shortly after the suit was commenced—that is, the suit to foreclose—I called on him—Taylor, with reference to the foreclosure, at which time he assured me that the plaintiff's interest should not be affected by it; that he only commenced the suit for the purpose of perfecting the title. He also stated he would carry out in good faith all arrangements he had made previous to that. He agreed to bid in the property, pay the amount due on the judgment, and I was not to make any delay in the suit. He was to continue in possession and apply the rents or earnings as he had done previously. After the debt was paid, the property was to revert back to the plaintiff. There was to be a conveyance made to him."

That seems to be the substance of the arrangement made according to Richmond W. Howland. I do not know that there is anything in the evidence to change the account which is thus given by him.

Now the question is, whether under the circumstances of the case, it is competent for the plaintiff thus to establish that the title which Taylor took under this sale was a mortgage, and that he held it subject to the same equities on the part of the plaintiff as he did prior to the commencement of any proceedings to foreclose the mortgage. I think the weight of the evidence may be—although it is subject to a good deal of criticism, inasmuch as a large part of it consists of admissions or statements made by

Taylor, who is now dead—that perhaps some arrangement was made. But I am of opinion that it is not competent for the plaintiff to make out, under the circumstances in this case, that this second title was a mortgage precisely as it existed before the commencement of the foreclosure suit; and therefore I hold that all this testimony is incompetent. And it seems to me that this is a case where the court ought to be somewhat stringent in relation to parol testimony. The mortgagee, the purchaser under the proceedings in the foreclosure suit, is dead. He cannot speak for himself. Parties come forward who state what he agreed to do, and what he said, and in that way it is sought to make out something different from what appears upon the face of the papers.

It is, of course, well settled that a deed absolute upon its face may be shown by parol to be simply a mortgage, a security for a debt. There may be some question as to the propriety of the adoption of that rule, but I suppose it may now be considered as settled; that is the rule of equity upon the subject.

But where a mortgage is given and that mortgage is foreclosed, and the mortgagee is the purchaser, and an absolute deed is made to him, the equity of redemption being foreclosed by judicial proceedings, I hold that the proof ought to be just as strong, to make the second deed a mortgage, as it would have been in the first instance, and perhaps even stronger.

Now, what are the facts under which it is sought to make out a new and independent contract by which this second title was to be held as a mortgage, and not an absolute deed? What did Taylor do? What new fact occurred? Who was in possesion of the property? Who remained in posession? As to that, there was no change. The only thing that could be said to operate upon the paties, in order to create a new arrangement, was that Richmond W. Howland was to do nothing to delay the

proceedings. "I was to make no delay in the suit," he says. That is all there was. Now, the question is, whether that, of itself, constitutes such a new contract—modifies, changes the old in such a way as to destroy the effect of the proceedings which actually took place.

It may well be asked, what was the object of Mr. Taylor in foreclosing this mortgage, if things were to remain precisely in *statu quo?* He certainly had some motive in putting an end to the equity of redemption. And yet it is claimed that the equity of redemption still existed after the foreclosure decree, sale and deed. I have been referred to the case of Paine vs. Wilcox, in the 16th of Wis. 202, which was not cited at the argument. That case was something like this. That was a case where there was a mortgage of some land. The mortgage was foreclosed. A decree was entered, and the mortgagor made an arrangement with the mortgagee by which he agreed not to take an appeal from the decree of foreclosure, and placed the mortgagee in possession, and the mortgagee agreed upon the payment of the amount of the debt to re-convey the property. But that case proceeds upon this ground—without criticising the case itself, which, perhaps, might well be done—that there was a new contract made so as to entitle the party to a specific performance of the contract; that there were circumstances in the case which took it out of the statute of frauds, and enabled the mortgagor to come into a court of equity and ask for a specific performance of the contract.

The court held that the relinquishment of the further litigation and omitting to stay the sale were such acts of part performance as would take the agreement out of the statute of frauds, and under such circumstances it was no obstacle to the enforcement of the agreement.

They also say that the party—the mortgagee, could not adopt the act of his attorney so far as to hold the title acquired at such sale, and repudiate as unauthorized the

agreement by which the sale was allowed to take place. Which seems rather a singular proposition that a client is obliged to adopt an agreement made by an attorney simply because he is employed to foreclose a mortgage, and the force of which I do not very well understand.

But, admitting this, and without criticising this opinion further, or saying that it is not law, still it proceeds upon the ground, that it was a case where there was a new contract that took it out of the statute of frauds, and the facts were sufficient to warrant a specific performance. It does not proceed upon the ground that the old mortgage was still a mortgage, notwithstanding a sale had taken place and the deed was absolute, as this case must in order to entitle the plaintiff to the relief which he asks. Now, in this case, if the party is entitled to relief at all, it is because things were unchanged and the title was no more than it had been; it was still a mortgage.

I do not feel inclined to hold in a case such as this, where a mortgagee forecloses his mortgage and the equity of redemption is ended, by the decree of a competent court, and he has *taken* an absolute title to the property, that he still is a mere mortgagee.

And it seems to me, that the case in itself constitutes a very strong illustration of the propriety of not enlarging the rule which already exists, and which enables a party to show that a deed absolute upon its face is nothing but a mortgage.

The result would be that parties could go on without limit, and it might in effect be said that there never could be a foreclosure of the mortgage. Deeds might be made, foreclosures take place, and still it would be a mortgage. I am entirely willing to place the decision upon what is alleged to be the arrangement made between Mr. Taylor and Mr. Richmond W. Howland, and to say that is not of such a character as to enable a party by parol to

show that it was simply a mortgage, or simply a security for a debt.

I leave out of view the conduct of Mr. Taylor, which, of course, is entirely inconsistent with the theory claimed by the plaintiff, his treating the property as his own, making repairs upon it, paying the taxes and insurance and selling it to these defendants, declaring that his title was a good title, making covenants of warranty, &c. I think it is quite possible that this may be the explanation of a good deal that was said by Mr. Taylor, and so may be consistent with the truth of the testimony; namely, that he did not want this property himself, but the payment of his debt, and that he may have said in some loose way from time to time that was all he cared about.

But, observe, it is unlikely under the circumstances that a man should make an absolute contract, binding upon him for an indefinite time, to treat that which was a perfect title simply as a defeasable title.

This is my view of this case. And, therefore, without going into the other question connecting these defendants with what is alleged to be the equity of the plaintiff when Taylor held the property, I am of the opinion that such an arrangement is not shown as to authorize the court to treat it as the property of the plaintiff so far as to authorize him to redeem it.

The bill will therefore be dismissed.

SUPREME COURT OF THE UNITED STATES.

No. 289.

EUGENE HOWLAND, APPELLANT,

vs.

LUCIUS S. BLAKE & JAMES T. ELLIOTT.

RESPONDENT'S BRIEF.

JNO. T. FISH,
Respondent's Att'y.

Supreme Court of the United States.

No. 289.

EUGENE HOWLAND, *Appellant*,

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

STATEMENT.

On the 1st day of July, 1873, the appellant filed his bill of complaint in the court below, to redeem lot 12, block 18, of the 1st ward of the city of Racine from a certain mortgage, bearing date October 21st, 1857, executed by the complainant to one Isaac Taylor.

The conceded facts of the case may be briefly stated as follows:

On October 21st, 1857, the appellant borrowed from Isaac Taylor seven thousand dollars, which sum he agreed to repay, with ten per cent. interest, on the 1st day of January, 1860, and to secure such payment, he, at the same time executed and delivered to Taylor, his certain bond for said amount, with an

indenture of mortgage, conveying lots 4 and 12, block 18, 1st ward of Racine.

The appellant at the time of the loan was erecting a building on lot 12, which was completed in the year 1859, and to further secure such loan, Taylor was let into possession under an agreement to collect the rents and apply them to the payment of the interest and principal of said debt.

On the 24th day of January, 1860, Taylor by deed
4 released lot 4 from the lien of said mortgage.

The appellant had failed to pay his taxes in 1855, and lot 12 was sold for taxes in that year by the city of Racine, and also by the county of Racine, and not having been redeemed, the city, in November, 1859, conveyed the premises by tax deed to one Daniel P. Rhodes, and the county conveyed said premises by tax deed at about the same time to said Isaac Taylor, upon the county sale for the year 1855.

A firm by the name of Wiltsie & Hetrick had fur-
5 nished appellant with materials which were used in the erection of said building, for which appellant failed to pay, and said firm filed a lien upon the building and interest of appellant in lot 12, and proceeded by action in the circuit court for Racine county to foreclose said lien, and such proceedings were had that on May 22nd, 1860, the interest of appellant in said premises was sold by the sheriff of Racine county, pursuant to a decree of said court, to Daniel P. Rhodes, for the sum of one thousand dollars, which
6 sale was reported to the said court and duly confirmed on the 8th day of August, 1860. (f. 659.)

On the 10th day of August, 1861, the said Isaac Taylor commenced an action in the circuit court for Racine county, to foreclose his said mortgage, which action was prosecuted to final judgment on the 26th day of February, 1862; the appellant's agent being called as a witness to show the amount due on the mortgage, and on the 17th day of June, 1862, the sheriff of Racine county, pursuant to said judgment of foreclosure, sold said premises at public auction, 7
to Isaac Taylor, for the sum of $9,300, which sale the sheriff reported to the circuit court, on August 5th, 1862, and the same was confirmed by the court, by an order entered on that day. (f. 622.)

On July 23rd, 1862, the said Taylor purchased from Daniel P. Rhodes his interest in said premises and obtained a quit claim deed therefor.

On July 7th, 1862, Taylor conveyed to one Clement by warranty deed, an alley and interest in one of the walls of the building. 8

On the 18th day of April, 1863, he conveyed the balance of said premises to the defendants by warranty deed, for the consideration of ten thousand dollars, the defendants paying two thousand five hundred dollars down, and giving to Taylor their ten promissory notes for seven hundred and fifty dollars each, payable semi-annually, with seven per cent. interest, all of which notes were secured by a mortgage on the premises, and were paid by the defendants; upon the execution of the deed by Taylor to the de- 9
fendants, they entered into possession and have enjoyed the rents and profits of the premises without

molestation, until this bill was filed, neither the complainant nor any person in his behalf has claimed any title or interest in said premises, or spoken to either of said defendants about the rents, repairs, or occupation of said premises, or about any title or interest of the complainant therein.

The appellant by his bill of complaint alleges in
10 substance, that after Taylor had commenced his suit in the state court to foreclose said mortgage, it was agreed between appellant and Taylor that the former should waive and forego all defense and delay in the prosecution of the suit, and all right of appeal from the judgment to be rendered therein, and allow Taylor to remain in possession of said premises, and in consideration of such agreement, Taylor agreed to continue in possession, and to bid in said premises at the sheriff's sale, to take a conveyance thereof from
11 the sheriff, and to hold the same and the possession of said premises merely as a security, for the payment of said mortgage debt, to receive and apply the rents of said premises to the payment thereof, and when the same should be paid, to reconvey said premises to appellant; and that the defendants knew of such agreement, and agreed to and did advance the money due Taylor, and took from him a warranty deed of said premises, in form to secure repayment by appellant of the amount advanced by defendants to said
12 Taylor, and that defendants agreed to reconvey to appellant when the rents should pay such sum.

The defendants by their answer, put in issue all these averments of the bill of complaint, and allege

that Isaac Taylor had an absolute title to said premises, and that they had no knowledge or information of any agreement to hold the property as security for the amount due on his said mortgage; and allege further that they purchased said property absolutely for the sum of ten thousand dollars, without any agreement to reconvey to appellant on any terms 13
whatever. Isaac Taylor died about 1865.

Upon the hearing the circuit court dismissed the bill, and the complainant appealed to this court.

The judgment of the circuit court may be sustained on either of the following grounds;

First: The complainant had no equity of redemption in the premises after the 22nd day of May, 1860.

Second: It was not competent for the complainant to show by parol evidence, the alleged agreement be- 14
tween himself and Taylor, made after the latter had brought suit to foreclose the mortgage, that the foreclosure and sale should not convey the complainant's equity of redemption in the premises, but, that the relation of mortgagor and mortgagee should continue after the sale, the same as if no foreclosure had taken place.

Third: The evidence does not establish such agreements.

ARGUMENT.

The complainant on March 27th, 1857, had the title 15
as appeared of record to lot 12, block 18, 1st ward of Racine, and on and between that day and November

10th, 1857, made purchases of materials from Wiltsie & Hetrick, to be used in the erection of a building on said lot, and which were so used, to the value and amount of $826.83.

By sec. 1. ch. 153 of the revised statutes of Wisconsin, Wiltsie & Hetrick had a lien upon the building and the interest of complainant in the lot, prior
16 to any other lien which originated subsequent to the commencement of the erection of such building. This lien was prior to the mortgage to Taylor, from which the complainant now seeks to redeem. Wiltsie & Hetrick took the ordinary proceedings in court to foreclose such lien, as will fully appear from the judgment-roll in that action, which will be found in the record, commencing f. 624, p. 265, and ending at f. 659, p. 280. These proceedings culminated in a decree adjudging that the plaintiffs had a lien on
17 all complainant's interest in said lot, on March 27th, 1857, and directing that the same be sold by the sheriff of Racine county, at public auction. Under this decree, the sheriff sold the property on May 22nd, 1860, to one Daniel P. Rhodes, for the sum of $1,000, (f. 525, p. 221, to f. 535, p. 225.) The sale was reported to the court and confirmed on the 8th day of August, 1860, by an order found at f. 659, p. 279.

Section 11 of ch. 153, R. S. of Wisconsin, 1858, declares the legal effect of the foregoing proceedings
18 as follows: "And such officer shall give the pur-"chaser a deed of conveyance of the premises sold, "which shall be valid and effectual to pass all the "right, title, and interest of the defendant in and to

"said premises absolutely, whether the same be held "in fee simple, for life, or for years." It must be borne in mind that from a sale on a mechanic's lien there is no redemption.

The complainant and Taylor were parties defendant in that action. It was alleged in the complaint therein that Taylor's mortgage was subsequent, and 19
subject to the plaintiffs' lien, and the circuit court so adjudged. It is not denied that these proceedings were regular and in all respects strictly in accordance with the provisions of the statute. It is not claimed that there exists any fact which prevents this sale from having the effect which the statute declares it shall have. Hence it is evident, that after the sale and conveyance, May 22nd, 1860, and the confirmation thereof on the 8th day of August, 1860, Rhodes had the absolute title to the premises, at law and in 20
equity as against both Taylor and Howland.

The title remained in Rhodes until July 23rd, 1862, when it was conveyed by him to Taylor by quit claim deed. (f. 535 to 537.) From May 22d, 1860, until July 23rd, 1862, neither Taylor nor complainant had any legal or equitable title to the premises in question, and therefore any and all contracts or agreements, with reference to said property, made by said parties between said dates, were absolutely void, for the reason that they had no interest in the subject matter of such 21
contracts or agreements.

But, it was claimed in the court below by the learned counsel for the complainant, that at the time of the conveyance by Rhodes, the relation of mort-

gagor and mortgagee existed between Howland and Taylor, and that any title acquired by Taylor during the existence of such relation, would be held by him in trust for Howland.

There are two answers to this position:

22 *First:* The relation of mortgagor and mortgagee did not exist between Howland and Taylor. That relation was terminated by a sale and conveyance of the interest of both of said parties in the mortgaged premises, by the sheriff to Rhodes, on May 22d, 1860.

Second: If such relation of mortgagor and mortgagee were conceded to exist between the parties, no trust arises therefrom which would prevent the mortgagee in possession from purchasing for his own benefit, a prior outstanding title, unless there was an

23 agreement on his part to protect the mortgagor's equity of redemption against such title.

By reference to the testimony of R. W. Howland, (f. 45, p. 17,) it will be seen that Taylor was let into possession by a written surrender, similar to the one made to Hardy, which recites that the mortgagor is unable to pay the interest upon the mortgage, and the mortgagee considers the premises scanty security, and therefore possession of the premises is surrendered to the mortgagee, "giving him all

24 the rights and powers of a mortgagee in possession" —with authority and power to collect rents, make leases and repairs, and keep the buildings insured, and to pay interest on the mortgage indebtedness. (f. 147 p. 59.)

R. W. Howland testifies at f. 45, "I gave him a

written surrender, very similar to the one under which Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt and interest.

"He agreed to carry the property until the debt was 25
cancelled in that manner. I think he qualified that by saying, 'or until it was evident that the property would not pay it, and in case it was thought advisable to sell the property, the proceeds, after paying him, should revert to Eugene Howland the complainant. I think that is about the substance of it.

"That part of my answer contained in the first four lines down to the words 'he agreed to carry,' etc. was in the written agreement; that part of my answer commencing with the words, 'he agreed to carry," 26
was in the verbal agreement." At f. 64 and 65 the witness gives an account of the same interview with Mr. Taylor, and says, "the conversation above quoted took place on the street between myself and Taylor, when no one was present; the terms of the written surrender were agreed upon, and I went to Paine & Millett's office and had the agreement put in writing. All the conversations between us on this subject occurred before and at the time the written surrender was made." 27

Therefore this instrument of surrender of possession must be held to contain the agreement of the parties at the time it was made, and parol testimony was not admissible to qualify or enlarge its terms.

Jarvis vs. Palmer, 11 Paige 650.
Whiting vs. Gould, 2 Wis. Rep. 552.

gagor and mortgagee existed between Howland and Taylor, and that any title acquired by Taylor during the existence of such relation, would be held by him in trust for Howland.

There are two answers to this position:

22 *First:* The relation of mortgagor and mortgagee did not exist between Howland and Taylor. That relation was terminated by a sale and conveyance of the interest of both of said parties in the mortgaged premises, by the sheriff to Rhodes, on May 22d, 1860.

Second: If such relation of mortgagor and mortgagee were conceded to exist between the parties, no trust arises therefrom which would prevent the mortgagee in possession from purchasing for his own benefit, a prior outstanding title, unless there was an

23 agreement on his part to protect the mortgagor's equity of redemption against such title.

By reference to the testimony of R. W. Howland, (f. 45, p. 17,) it will be seen that Taylor was let into possession by a written surrender, similar to the one made to Hardy, which recites that the mortgagor is unable to pay the interest upon the mortgage, and the mortgagee considers the premises scanty security, and therefore possession of the premises is surrendered to the mortgagee, "giving him all

24 the rights and powers of a mortgagee in possession" —with authority and power to collect rents, make leases and repairs, and keep the buildings insured, and to pay interest on the mortgage indebtedness. (f. 147 p. 59.)

R. W. Howland testifies at f. 45, "I gave him a

written surrender, very similar to the one under which Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt and interest.

"He agreed to carry the property until the debt was 25
cancelled in that manner. I think he qualified that by saying, 'or until it was evident that the property would not pay it, and in case it was thought advisable to sell the property, the proceeds, after paying him, should revert to Eugene Howland the complainant. I think that is about the substance of it.

"That part of my answer contained in the first four lines down to the words 'he agreed to carry,' etc. was in the written agreement; that part of my answer commencing with the words, 'he agreed to carry," 26
was in the verbal agreement." At f. 64 and 65 the witness gives an account of the same interview with Mr. Taylor, and says, "the conversation above quoted took place on the street between myself and Taylor, when no one was present; the terms of the written surrender were agreed upon, and I went to Paine & Millett's office and had the agreement put in writing. All the conversations between us on this subject occurred before and at the time the written surrender was made." 27

Therefore this instrument of surrender of possession must be held to contain the agreement of the parties at the time it was made, and parol testimony was not admissible to qualify or enlarge its terms.

Jarvis vs. Palmer, 11 Paige 650.
Whiting vs. Gould, 2 Wis. Rep. 552.

gagor and mortgagee existed between Howland and Taylor, and that any title acquired by Taylor during the existence of such relation, would be held by him in trust for Howland.

There are two answers to this position:

22 *First:* The relation of mortgagor and mortgagee did not exist between Howland and Taylor. That relation was terminated by a sale and conveyance of the interest of both of said parties in the mortgaged premises, by the sheriff to Rhodes, on May 22d, 1860.

Second: If such relation of mortgagor and mortgagee were conceded to exist between the parties, no trust arises therefrom which would prevent the mortgagee in possession from purchasing for his own benefit, a prior outstanding title, unless there was an

23 agreement on his part to protect the mortgagor's equity of redemption against such title.

By reference to the testimony of R. W. Howland, (f. 45, p. 17,) it will be seen that Taylor was let into possession by a written surrender, similar to the one made to Hardy, which recites that the mortgagor is unable to pay the interest upon the mortgage, and the mortgagee considers the premises scanty security, and therefore possession of the premises is surrendered to the mortgagee, "giving him all

24 the rights and powers of a mortgagee in possession" —with authority and power to collect rents, make leases and repairs, and keep the buildings insured, and to pay interest on the mortgage indebtedness. (f. 147 p. 59.)

R. W. Howland testifies at f. 45, "I gave him a

written surrender, very similar to the one under which Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt and interest.

"He agreed to carry the property until the debt was 25
cancelled in that manner. I think he qualified that by saying, 'or until it was evident that the property would not pay it, and in case it was thought advisable to sell the property, the proceeds, after paying him, should revert to Eugene Howland the complainant. I think that is about the substance of it.

"That part of my answer contained in the first four lines down to the words 'he agreed to carry,' etc. was in the written agreement; that part of my answer commencing with the words, 'he agreed to carry," 26
was in the verbal agreement." At f. 64 and 65 the witness gives an account of the same interview with Mr. Taylor, and says, "the conversation above quoted took place on the street between myself and Taylor, when no one was present: the terms of the written surrender were agreed upon, and I went to Paine & Millett's office and had the agreement put in writing. All the conversations between us on this subject occurred before and at the time the written surrender was made." 27

Therefore this instrument of surrender of possession must be held to contain the agreement of the parties at the time it was made, and parol testimony was not admissible to qualify or enlarge its terms.

Jarvis vs. Palmer, 11 Paige 650.
Whiting vs. Gould, 2 Wis. Rep. 552.

This instrument imposed no duty upon Taylor, and none is attempted to be shown by the testimony, to protect the property from outstanding liens or claims. It was the duty of Taylor under this agreement, to collect the rents and apply them to the payment of the interest and principal of his mortgage debt; to this extent only was he a trustee. He might purchase the mortgagor's equity of redemption for his own benefit.

Sturdevant et al v Mather et al 20 Wis. 585, 586 and cases cited
1 Jones on Mortgages 711. 712 - 713

Ten Eyck vs. Craig et al., 62 N. Y. 406, 420 to 424. and cases cited

Parol evidence was not admissible to keep alive the equity of redemption through the foreclosure proceedings, under the circumstances of this case.

On the 21st day of October, 1857, the complainant gave Isaac Taylor a bond, (f. 598, p. 253.) secured by a mortgage, for seven thousand dollars, due January 1st, 1860, with ten per cent interest. This bond gave complainant an option, by giving notice prior to November 1st, 1859, to extend the time of payment on two thirds of the amount due, one third to January 1st 1861, and one third to January 1st, 1862. On January 29th 1859, complainant let Taylor into possession, with power to collect the rents, and apply them to the payment of the principal and interest of the bond and mortgage.

The debt increased until August 10th, 1861, when Taylor commenced an action in the circuit court for Racine county, to foreclose his mortgage. The judgment roll may be found at f. 547, p. 230, from which it appears by the testimony of R. W. Howland, who

was called as a witness, that there was due $8,866.82 on February 26th, 1862. These proceedings culminated in a public sale of the premises on June 19th, 1862, by the sheriff of Racine county, to Isaac Taylor for the sum of $9,300. There was no redemption from a sale under a mortgage executed prior to 1858, by the statutes of Wisconsin. The proceedings in that case were the ordinary ones to foreclose a mortgage in the courts of the state, and were in all respects regular. The purpose and legal effect of such proceedings were to convey the equity of redemption of the mortgagor, and the title of the mortgagee to the purchaser at the foreclosure sale. The Judgment contained the usual provision, that either or any of the parties to the action might become the purchaser or purchasers at such sale.

The complainant sought to show by parol evidence, an agreement between himself and Taylor, who is dead, made pending these foreclosure proceedings, that such proceedings, judgment, sale and conveyance, should be void, and have no effect upon the said mortgage, and that the equity of redemption of Eugene Howland, in the premises described therein, should not pass by such deed. To establish this agreement, Richmond W. Howland testified in substance:

"Shortly after the suit was commenced, I called on him (Taylor), with reference to the foreclosure, at which time he assured me that the plaintiff's interest —that is, Eugene Howland's interest—in it, should not be affected by it. That he only commenced the

suit for the purpose of perfecting the title. He also said he would carry out in good faith all arrangements he had made previous to that. He agreed to
34 bid in the property for the amount due on the judgment, and I was not to make any delay in the suit. He was to continue in possession and apply the rents and earnings as he had done previously; after the debt was paid the property was to revert to the plaintiff. There was to be a conveyance made to him." (f. 48, p. 18.)

There is nothing in the evidence to change, substantially, this account of the arrangement given by Richmond W. Howland. By this testimony the com-
35 plainant seeks to establish an oral agreement made while the suit was pending, that it should have no legal effect upon the mortgage, that the deed which should be made on the sale under the decree should not convey the mortgagor's interest in the premises. Complainant in effect, seeks to show by a parol agreement made prior to entering the decree, that it should not be binding upon the parties. To reverse the decree in this case, the court must find that when a mortgage once exists, the mortgagee can
36 take no proceedings in court to foreclose the equity of redemption, which may not be contradicted by parol evidence. Decrees of a court of equity have a more binding effect upon the parties. They are absolutely conclusive upon all parties to the action. It would be contrary to the policy of the law, a violation of every principle involving the force and effect of judicial proceedings, to permit one party to a

suit, after the other is dead, to show by parol testimony, an oral agreement pending the litigation, that the decree was to have no effect. 37

Griffith et al. vs. Bogert et al., 18 How. 158, 161.

This sale was made by the sheriff, and the whole subject came up for adjudication before the court August 5th, 1862, on the sheriff's report of the sale. All parties were before the court. The question to be adjudicated was, whether the sheriff's report of the sale was true, and whether it was in fact what it purported to be, viz., a sale of the entire interest of the mortgagor and mortgagee. After a hearing the circuit court of Racine county adjudged that the report and the sale be ratified and confirmed. 38

This adjudication has all the binding force of a judgment and cannot be questioned in a collateral proceeding. It is conclusive between the parties.

Again, the judgment, sale and confirmation is a compulsory proceeding, conveying by the court the mortgagor's equity in the property under the mortgage. *Rohrer on Judicial Sales, § 12, Note 6.* Such a conveyance cannot be contradicted by parol. 39

It is the settled law of this court that a deed absolute on its face may be proven to be a mortgage by parol evidence, showing the circumstances attending the execution of the deed, and when it appears that the parties met and negotiated on the basis of a loan on security, then the instrument will be held in equity to be a mortgage whatever may be its form.

Morris vs. Nixon, 1 How. 118, 126, 127.

Russel vs. Southard, 12 How. 139.
Babcock vs. Wyman, 19 How. 289.
Villa vs. Rodriquez, 12 Wall. 323.

In the case first cited, Morris borrowed from Nixon $5,000 for which he executed and delivered to Nixon his bond and as a condition of the loan Nixon required Morris to execute and deliver to him a deed of certain premises which was absolute in form. The court in characterizing the instrument at page 126 says: "The transaction was begun by Morris, with the request of a loan from Nixon, for which he offered a security upon the property, for the management of which Nixon was agent. It ended by Morris giving Nixon a deed for the property, absolute on its face, and also a bond for a loan of $5,000; unless then, some proof has been given to show that they truly bargained upon another footing, and that the loan did not form the chief inducement for the execution of the deed, and had not been treated by both parties as a substantial part of the consideration, though not expressed in the recitals, equity will interpret it to be a security for money loaned.

In *Russell vs. Southard*, the parties met on the footing of borrowing and lending upon security. The negotiations resulting in Russell executing to Southard an absolute deed of his farm worth over $12,000 for which he received $2,000 in ready money and assignment, of choses in action of the alleged value of $2,929.81½, and an agreement, on the part of Southard, to sell the property to Russel in a given time on payment of $4,929.81½ with interest, which

agreement contained a condition that it should be 43
void if the money was not paid at the time prescribed therein. Russell made default and at a subsequent time, finding that the choses in action received from Southard did not amount to $2,929.81½ the sum which he had allowed for them, demanded and received from Southard $100, and gave him a receipt in full which was endorsed on the agreement to re-sell.

This court held the deed to be a mortgage. It also held in effect that the payment to Russel of $100, the 44
balance of the loan, and his receipt in full, together with a surrender of the contract of Southard to reconvey, did not amount to a conveyance of the equity of redemption so as to bar the right to redeem.

In *Babcock vs Wyman*, Babcock held certain notes, and a mortgage on the property of Wyman to secure the same: Wyman required further advances, and on the promise of Babcock to make them, executed a deed of the mortgaged premises, absolute in form, to Babcock, who thereupon gave him a memor- 45
andum showing the amount due on all the notes that he held against Wyman, but all such notes and the mortgage were retained by Babcock. (p. 294.) The court held the deed to have been given as security for the indebtedness and for future advances, and decreed redemption.

Villa vs. Rodriquez. In this case the defendant had, in 1864, loaned his sister $4,000, for which she, and three of her children who owned 3-7 of a certain tract of land, gave their note, secured by a mortgage 46

on the land, due in one year with interest at the rate of two per cent a month, to be compounded every six months, with a provision in the mortgage that defendant might pay the taxes and add the amount to the debt secured thereby, and the sums so advanced should draw interest at the same rate. Taxes were paid by defendant. The amount became due, the mortgagors were unable to pay, and to obtain additional time, they, with others, executed a deed as
47 security, not as a sale, on 5-7 of the same estate, and agreed that the owners of the other 2-7 should execute a conveyance on arriving at their majority, which they accordingly did. Here was a new transaction. Rodriquez had a mortgage on the undivided 3-7 of an estate, which he released in consideration of a mortgage upon the whole estate to secure the same debt.

It was conceded on the argument of that case, that the deed was a mortgage. The appellants
48 claimed that it was a mortgage upon the land. The respondent claimed that it was a mortgage on the proceeds, not on the land as a thing.

In order to prove an absolute deed to be a mortgage, the intention of the parties must be established by proof, not merely of declarations, but of facts *dehors* the deed, inconsistent with the idea of an absolute purchase.

4 Kent's Commentaries, 143, note 2.
Glisson vs. Hill, 2 Jones Eq. (N. C.) 256.
49 *West vs. Hendrix, 28 Ala 226*

Nor can it be shown that the equity of redemption

has passed, by proof of mere declarations of the parties at the time of the transaction, that it should never be exercised by the grantor. If the circumstances surrounding the transaction show that the parties met on the footing of borrower and lender on security, and a conveyance, whatever its form, was made upon a loan, equity will decree the instrument to be a mortgage.

In the case at bar, the testimony offered by the 50
complainant is to the effect that the mortgagee, Taylor, pending the foreclosure proceedings, simply declared that the equity of re
affected by such proceeding

Such declaration could ha
the foreclosure proceedings than would the declaration of a mortgagor have on a mortgage, should he declare at the time he executed it, that the equity of redemption should pass to the mortgagee.

The case of *Sweet vs. Mitchell, 15 Wis. 641*, bears 51
upon the point under consideration. That was a bill to redeem certain lands, which it was alleged Mitchell held as security for advances made to Sweet. The court divided the lands into three classes. The first class alone affects the question we are considering. At page 661, Paine, J., says:

"In respect to the first class, the plaintiff claims that the lands were conveyed by him to Mitchell by deeds absolute on their face, but really as a security for divers moneys, advanced and to be advanced 52
by Mitchell for him as loans. If this were all that was shown by the plaintiff upon this subject, it would

on the land, due in one year with interest at the rate of two per cent a month, to be compounded every six months, with a provision in the mortgage that defendant might pay the taxes and add the amount to the debt secured thereby, and the sums so advanced should draw interest at the same rate. Taxes were paid by defendant. The amount became due, the mortgagors were unable to pay, and to obtain additional time. they, with others, executed a deed as
47 security, not as a sale, on 5-7 of the same estate, and agreed that the owners of the other 2-7 should execute a conveyance on arriving at their majority, which they accordingly did. Here was a new transaction. Rodriquez had a mortgage on the undivided 3-7 of an estate, which he released in consideration of a mortgage upon the whole estate to secure the same debt.

It was conceded on the argument of that case, that the deed was a mortgage. The appellants
48 claimed that it was a mortgage upon the land. The respondent claimed that it was a mortgage on the proceeds, not on the land as a thing.

In order to prove an absolute deed to be a mortgage, the intention of the parties must be established by proof, not merely of declarations, but of facts *dehors* the deed, inconsistent with the idea of an absolute purchase.

4 Kent's Commentaries, 143, note 2.
Glisson vs. Hill, 2 Jones Eq. (N. C.) 256.
49 *West vs. Hendrix, 28 Ala 226.*

Nor can it be shown that the equity of redemption

has passed, by proof of mere declarations of the parties at the time of the transaction, that it should never be exercised by the grantor. If the circumstances surrounding the transaction show that the parties met on the footing of borrower and lender on security, and a conveyance, whatever its form, was made upon a loan, equity will decree the instrument to be a mortgage.

In the case at bar, the testimony offered by the 50
complainant is to the effect that the mortgagee, Taylor, pending the foreclosure proceedings, simply declared that the equity of redemption should not be affected by such proceedings. Stephens v Cuchman 36-Ill. 186-193

Such declaration could have no greater effect upon the foreclosure proceedings than would the declaration of a mortgagor have on a mortgage, should he declare at the time he executed it, that the equity of redemption should pass to the mortgagee.

The case of *Sweet vs. Mitchell, 15 Wis. 641*, bears 51
upon the point under consideration. That was a bill to redeem certain lands, which it was alleged Mitchell held as security for advances made to Sweet. The court divided the lands into three classes. The first class alone affects the question we are considering. At page 661, Paine, J., says:

"In respect to the first class, the plaintiff claims that the lands were conveyed by him to Mitchell by deeds absolute on their face, but really as a security for divers moneys, advanced and to be advanced 52
by Mitchell for him as loans. If this were all that was shown by the plaintiff upon this subject, it would

follow from the decision in *Plato vs. Roe*, that the parol evidence offered by him, to show the real nature of the transaction, and that the deeds were really mortgages, should have been admitted. But after making the above allegations, the plaintiff proceeds to allege that, while Mitchell held the lands so conveyed, the plaintiff made to him another conveyance,
53 including the same lands and some others, and containing the following clause: 'It being expressly understood, that if I have any equity of redemption, or any interest in and to said lots or parcels of land above described, the same, for the aforesaid consideration, is hereby relinquished,' etc. This conveyance purports to be upon a consideration of fifteen thousand dollars. The complaint expressly admits that the intention of the parties making it, was to convey such a title to Mitchell, that he could sell and convey
54 any portion of the land and give a perfect title to the purchaser, free from any right of redemption in the plaintiff. And yet, notwithstanding this conveyance and this intention thus admitted, the plaintiff now seeks to show by parol that he was still to retain his equity of redemption, and thus contradict and nullify this release. This is going much beyond the rule admitting parol evidence to show that an absolute deed was given as a security, and thus convert it into a mortgage. It is in effect saying, that after such a
55 mortgage has once been made it is impossible for the mortgagor to convey his equity of redemption to the mortgagee by an instrument which he may not afterwards contradict and set aside by parol evidence.

Believing as we do, that the rule itself was a violation of principle and sound policy, while we have regarded it as our duty to follow it, so far as it may be fairly regarded as established by authorities, we are not inclined to extend it any further."

Smith v Bouck
33 Wis. 19. 34

Certainly a sheriff's deed on foreclosure is of equal solemnity with a deed executed by the mortgagor. 56
Its only effect is to transfer the equity of redemption, and the only evidence to defeat such deed is the declaration, that, notwithstanding the deed, the equity of redemption should not pass. This would be going farther than any case has gone on mere declarations disconnected with any transaction.

But there are many considerations which may be urged against the admission of parol evidence in the case at bar, where the mortgagor's equity of redemption was conveyed by the court of equity, through 57
the ordinary judicial proceedings to foreclose a mortgage, that do no not apply to the case of a deed of release of the equity of redemption from the mortgagor to the mortgagee. In one case the mortgagee presents himself to the mortgagor as a purchaser of the equity of redemption, all competition is excluded. There is an opportunity for undue influence and oppression. There is an opportunity to exact hard terms. There is the influence of wealth over poverty. In the other case the parties do not meet with 58
reference to the conveyance; neither can control the sale. The court by its decree directs its officer to give public notice of the sale, and thereby invite competition, the decree provides that any person

may become a purchaser at such sale, and the court requires the sale to be reported to it, when a judicial inquiry is made as to its fairness, and the court only confirms it when it appears to be fair in all respects.

59 Public policy demands that such proceedings should not be held to be a nullity, simply because the defendant agreed to waive a defense, which he never had, and because he waived the right to make a delay in the prosecution of the suit, which delay of itself would have been a wrong, and a fraud upon the court. The record in that suit which contains the testimony of R. W. Howland, contradicts his testimony in this suit as to the agreement. Taylor's bond and mortgage was over eighteen months past
60 due when he commenced that action. There was no dispute as to the amount due. Taylor had Howland called as a witness, to establish the amount. It took sixty-two days to put defendants in default, when judgment could have been entered. But we find that Taylor allowed six months to pass before judgment was entered, and a year after the suit was commenced before the sale was confirmed. There was no waiver of any right on the part of the defendant in that suit. There was no act on his part to facilitate
61 the entry of judgment. There was no waiver of a defense, because he had no defense to waive. He did not forego any right to make delay, because he had no right to delay the plaintiff in his action, and no ability to make delay, except by committing perjury in swearing to an affidavit of merits. If the ev-

idence is admissible in this case under these circumstances, there is no end to litigation. Should this court so establish the rule, and affirm the decree of the court below, on other grounds the complainant may again file his bill of complaint and allege the 62
facts relative to the foreclosure of the mortgage by Taylor as alleged in the present bill, and the facts relative to the litigation in this action, and then allege that there was an oral agreement betwen Blake & Elliott and himself, that the judgment herein should not be final and conclusive on his right to ~~reclaim~~ redeem. The decree must be considered conclusive between the parties.

Lamp Chimney Co. vs. Brass & Copper Co.,
1 Otto 656-661. 63

The case of *Mary Wichalfe, widow and Executrix of John Wichalfe deceased, vs. John Short; reported in 3 Brown's Parliamentary Cases 414,* is on all fours with the case at bar. The facts as claimed in that case were the same as claimed in the case at bar, by appellant. The defendant in that suit, to so much of the bill as sought to lay open the foreclosure, pleaded the enrolled decree and his possession under the same, in bar; upon argument, Lord Chancellor Cowper allowed the plea. The plaintiff having replied 64
and witnesses being examined, the cause was heard before Lord Chancellor Harcourt, who dismissed the bill, and on appeal the decree was affirmed. To this case I ask the attention of the court.

The learned Circuit Judge, who heard the case in the court below, decided that the testimony was not

admissible, that there was no such transaction alleged or attempted to be proven, as would take the case out of the statute of frauds.

65 It is conclusively shown by the foreclosure record, in the case of Taylor vs. Howland, the judgment record of *Wiltsie & Hettrick vs. Howland*, and the deed from Rhodes to Taylor, that on the 18th day of April, 1863, when Taylor conveyed the premises in question to the defendants, complainant had no interest legal, or equitable therein, but Taylor was the owner in fee simple. This being so, it is incompetent to show by parol any ageement between defendants and the complainant, whereby the latter was to
66 acquire any interest in the defendants' purchase from Taylor, for this would be showing a trust in lands by parol, which is within the statue of frauds.

Richardson vs. Johnson, 41 Wis. 100-104.
Payne vs. Patterson, 77 Pa. St. 134.
Whiting vs. Gould, 2 Wis. 552, 582.
Bander vs. Snyder, 5 Barb. S. C. 63.
Lathrop vs. Hoyt, 7 ib. 59.

In the last cited case, the plaintiff owned a farm which was subject to a mortgage. Proceedings were
67 instituted to foreclose the mortgage, a decree was entered, and the land was advertised to be sold under the decree. Two or three days before the sale plaintiff applied to defendant for assistance to enable him to pay the amount of the decree and costs, and it was agreed that defendant shoud let plaintiff have the money. That to secure re-payment defendant should bid off the land, take a deed in his own name

and give plaintiff two weeks notice when he wanted the money repaid. In accordance with this, the defendant bid off the land, took a deed in his own name, 68
and subsequently sold the land. The action was for an accounting, and that defendant might be adjudged the trustee of the plaintiff in regard to the land.

The court held the agreement clearly within the statute of frauds and void. MASON J., in his opinion, says: "There is a wide distinction between the case of a resulting trust, where the party has paid the purchase money and the deed is given to the defendant, and the case under consideration. In the former case the trust results by operation of law 69
from the payment and giving of the deed, and requires no agreement of the parties to create it. Not so, the case made by the plaintiff in his evidence. Here the trust results from the agreement between the parties. The plaintiff agreed with the defendant that he should go to this sale, and bid in the premises for him, if you please, and take a deed in his own name, and give the defendant time to pay him the amount of his bid, and then the defendant agreed he might have the title. Such a case is most clearly 70
within the spirit of the statute, and falls within its very words. * * * *

The plaintiff's case is not aided by calling this an agreement to allow plaintiff to redeem the land, and that the defendant should re-convey upon redemption, for it is then plainly a case within the statute of frauds. *The transaction cannot be considered a mortgage between the parties, for the plaintiff's*

interest was all divested, and he had no interest to
71 *mortgage.*

In 2 Story Equity Juris. § 1,201, *a*, it is said: "Where a man employs another by parol, as an agent to buy an estate for him, and the latter buys it accordingly in his own name, and no part of the purchase money is paid by the principal, then, if the agent denies the trust, and there is no written agreement or document establishing it, he cannot by suit in equity compel the agent to convey the estate to him, for that would be decidedly in the teeth of the statute of
72 frauds." See also:

Hall vs. Smith, 4 Johns. R. 240.
Sherill vs. Crosby, 14 Johns. R. 358.
Botsford vs. Burr, 2 Johns. Chy. 406.
Partlett vs. Pickersgill, 4 East R. 577, Note.
Sweet vs. Mitchell, 15 Wis. 641.
Rasdal's Admr. vs. Rasdal, 9 id. 379.
Getman vs. Getman, 1 Barb. Chy. 499.

The provisions of the revised statutes of Wisconsin of 1858, Ch. 84, abolishing uses and trusts, and
73 § 6 of Ch. 108, relative to fraudulent conveyances of lands, are the same as the provisions of the statutes of New York relative to the same subjects.

The evidence does not establish such agreements, if admissible.

ABSTRACT OF COMPLAINANT'S EVIDENCE.

Richmond W. Howland testifies: "I was acting as the agent of my brother, the complainant, under power of attorney, bearing date July 30th, 1857, (f. 139),

Executed bond, (f. 598) and mortgage (f. 601), to 74
Isaac Taylor to secure the payment of $7,000, advanced by Taylor, used in erecting building on lot 12, block 18, city of Racine, at a cost of about $24,000. Building was commenced in July, 1857, and completed in spring of 1859. I had the sole charge of it. Surrendered possession of upper story to Mr. Taylor in 1859. under an agreement, (f. 143), and rest of building to Phineas Hardy, May 9th, 1859, under a written surrender, (exhibit "C," f. 147); these papers were executed by Eugene Howland personally. The 75
mortgage mentioned in exhibit C., to Phineas Hardy, was paid about a year afterwards, when the whole property was surrendered to Isaac Taylor, who took possession and collected the rents.

"I gave him a written surrender very similar to the one under which Mr. Hardy took possession, and he was to apply all the earnings of the property to the cancellation of his debt and interest. He agreed to carry the property until the debt was cancelled in that manner. I think he qualified that by saying, 76
or until it was evident that the property would not pay it And in case it was thought advisable to sell the property, the proceeds, after paying him should revert to Eugene Howland, the complainant. I think that is about the substance of it. That part of my answer contained in the first four lines down to the words 'he agreed to carry,' &c., was in the written agreement. That part of my answer commencing with the words 'he agreed to carry,' was in the verbal agreement. (f. 45). 77

I do not know where the written agreement is. Taylor while in possession, commenced an action in the Racine circuit court to foreclose the mortgage; a decree was rendered in that case at the spring term, in the year 1862, the amount then due was a little less than $9,000, it was arrived at by a settlement between Taylor and myself. There was a sale under that decree made on the 19th day of June, 1862, and a deed given by the sheriff of Racine county,
78 pursuant to such sale, to Mr. Taylor.

"Shortly after the suit was commenced, I called on him with reference to the foreclosure, at which time he assured me that the plaintiff's interest, that is, Eugene Howland's interest, in it should not be affected by it; that he only commenced the suit for the purpose of perfecting the title. He also said he would carry out in good faith all arrangements he had made previous to that. He agreed to bid in the property for the amount due on the judgment, and I was not
79 to make any delay in the suit. He was to continue in possession, and apply the rents and earnings as he had done previously. After the deed was paid, the property was to revert to the plaintiff; there was to be a conveyance made to him." (f. 48).

Taylor continued in possession, applying the rents to the payment of his debt, for about ten months, when the property was transferred to Blake & Elliott. "It was made by an arrangement between myself, Mr. Taylor and Mr. Blake. I made an agreement
80 with Mr. Blake a day or two before that, to arrange with Mr. Taylor, for Mr. Blake to carry the trust or the

property instead of Mr. Taylor. Mr. Taylor did not want to carry it because he did not want to be annoyed with tenants. That was one reason, and another was that he wanted to move his business to Chicago. Mr. Taylor wanted me to procure some one to take his place and I went to Mr. Blake for that reason." (f. 49). I went to him because he had been talking of carrying it for the last ten months before that. Our relations were friendly, I had been in his employ 81
for nearly two years, and remained in his employ for about five years after that. My wife lived in Blake's family for four years and we were married at his house. "There was an arrangement by us at the the time of the sale. Mr. Blake in connection with Mr. Horatio T. Taylor, who was then sheriff, agreed to take the property and carry it six years. They were to pay $2,000 down, and the balance in six years time, at 7 per cent interest, and the plaintiff in this suit was to pay them ten per cent. the sheriff, Tay- 82
lor, was to take charge of the property, collect the rents and apply it to the cancellation of the indebtedness. Isaac Taylor was to convey the title of the property to them. After this arrangement was made I took a trip to the country for about a week, and when I returned was informed that for some reason the arrangement had fallen through. I also made a very similar arrangement with Mr. Blake and Mr. John W. English in December of the same season, and that also fell through. There was no other arrange- 83
ment until this final arrangement with Mr. Blake about two days before the transfer was made. The

arrangement with Mr. Blake differed in only one respect from the others—that there was no definite time fixed. I also agreed that I would not trouble or annoy him in any manner, but would let it run until the property paid for itself" (f. 50). At this time I think Blake understood how Taylor was carrying the property, we talked it over between our-
84 selves. Mr. Blake was regarded wealthy at that time, so much so that Taylor was willing to take Mr. Blake, and recommended him to go into it. A conveyance was made to defendants in pursuance of this arrangement. They paid $10.000 which was the amount, as I understood, that was due to Taylor from the plaintiff, they paid part in money and part in notes secured by mortgage on the property marked exhibit "D" (f. 149). They took possession of the property and have had the rents and management of it
85 to the present time. In the arrangement with Blake the rent was to be applied to liquidate the indebtedness on the property, he was to keep an account of the rents, expenses and disbursements and when the debt was paid he was to convey the property to plaintiff. I had a similar arrangement with Mr. Blake, as to a brick-yard some miles from Racine. In the spring of 1860, he bid in this brick-yard property at sheriff's sale and was carrying it at the time of this purchase; he carried it I think until the fall of
86 1867. I then negotiated a sale of the property and it was conveyed and I had a settlement with Blake and the balance that was coming due was paid over to me: Mr. Blake paid the taxes on the brickyard-

property from the time of the sheriff's sale down to the settlement. Shorty before the arrangement with Blake about the property in suit Taylor told me that he had a proposition from a party in Chicago to purchase the property, whereby there would be $4,000 or $5,000 coming to the plaintiff; that is, the proceeds of the sale would exceed the indebtedness about that 87
amount. I objected to it on account of the amount being too small. He then urged me very strongly to get some person to take the property off his hands and recommended Blake.

On cross-examination the witness testified: that Eugene Howland held the title to the property, that it was purchased by witness and his father in 1851; that he was then in business at Racine with one Adams, that the firm failed in January, 1858; that when the property was purchased, the entire title was 88
taken in the name of one Jenks, who afterwards deeded one-half to Eugene Howard and the other half to one White, and White conveyed to my brother. The purchase price of the lots 3, 4 and 12 was $3,000. I transacted all the business for my brother, had the power of attorney from him until about 1857. My brother sent from California about $1,750 and he borrowed $600 from Hardy which he left with me. This was all the money that he personally furnished towards the building or the lots. The conversation 89
with Isaac Taylor with reference to the surrender of the possession of the premises to him in 1859 and the terms of the surrender were agreed upon, and I then went and had the agreement put it writing. "I

have no knowledge of having had any conversation with Mr. Taylor before the foreclosure was begun, nor for some time after, for he was absent from home at the time it was commenced. As soon as he came home, I called upon him and had this conversation in
90 which he agreed not to harm my brother's interest and to carry out his previous agreement in good faith. He states that it was to clear up and perfect the title. Do not think any particular class of claims was mentioned."

Q.—Were there any other incumbrances at that time upon the premises except mechanics' claims?

A.—There were not, except Mr. Rhodes had a deed based upon one of the mechanic's liens, but Mr. Taylor told me he controlled that. He controlled it
91 before he commenced the foreclosure.

Q.—Was the talk with Mr. H. T. Taylor about the property referred to in his testimony, which he designated as the arrangement with yourself, Mr. Blake and Mr. Isaac Taylor, had at the time of the foreclosure sale?

A.—It was had mostly on that day and the day before, but they did not come to any definite arrangement on that day. I asked Isaac Taylor for an adjournment of the sale for a few days. He said that
92 made no odds, he would bid it off and hold it until arrangements could be completed. The day after the sale they did make positive arrangements as I understood. I then went on with my business as usual, with the understanding that the writings would be drawn in my absence.

Q.—Where was the conversation had with Isaac Taylor, in which he assured you that your brother's interest should not be affected by the foreclosure?

A.—I think it took place at his house, I went to his house; nobody was present that I remember. 93

Q.—Where did you make the arrangement with Mr. Blake to take the property about which you have testified?

A.—I found him that morning in the rear of the shop, under an old shed. No one was present to my knowledge.

I had several conversations with Blake, but no one was present except Isaac Taylor and Horatio T. Taylor. I never made any arrangement with Mr. Elliott. I never recognized him in the transaction, neither be- 94
fore nor since. I never had any talk with him about it—never intended to A few days after, I learned that the deed was made to Blake & Elliott. I knew Mr. Elliott familiarly at that time, and he kept what books were kept by Blake & Elliott. Never made any inquiry about the rent or repairs of the property. The $9,300 bid by Isaac Taylor at the sale was the entire amount due him after taking out the rents and earnings of the property. That was the sum due him, but did not include the Wiltsie & Hetrick lien and 95
some tax liens as I understood it Eugene Howland went to California in 1859, and remained there until 1864 when he removed to Watertown, N. Y., where he has since lived. I have not written him since '59, and received but one letter from him, about 1860 the time he went to California.

Q.—When, subsequent to the conveyance by Isaac Taylor to Blake & Elliott, did you first directly communicate to Eugene Howland, the arrangement un-
96 der which you say the property was conveyed?

A.— I never communicated with him directly, I saw him last spring in regard to the property, that was the first time I saw him since he came from California. I saw him the latter part of May once or twice, and about the 1st of June at my father's house in the state of New York.

Q.—Did you consult attorneys about bringing this suit, before seeing your brother in May and June last?

97 *A.*—Yes, sir.

Q.—When you saw your brother in May and June last, did you get from him permission to bring this suit?

A.—I consulted with him about the suit. It was the first time that I consulted with him about the suit?

Q.—Did he tell you to bring the suit?

A.—He consented to have the suit brought, advised it.

Re-direct examination: I have been familiar with
98 the way the property has been occupied since the conveyance from Taylor to the defendants.

Q.—Is there any special reason why you did not from time to time after the conveyance to Blake & Elliott, inquire of them as to the income of the property?

A.—There was.

Q.—What was it?

A.—Blake wished me to agree, in case he took the property, not to annoy him until it was paid for, that was the reason. 99

Q.—Was there any reason why you did not correspond with your brother, Eugene, with reference to the property, and what was the reason?

A.—The reason was, that he was dissatisfied about the time he went away, as to the way the business had been managed and done, and we agreed that the business after that should be done through our brother, Jerome; that is, the correspondence. (f. 41-83).

Horatio T. Taylor, testified: that he had conversa- 100
tions with Isaac Taylor, Mr. Blake and Richmond W. Howland, of the same purport as testified to by Richmond W. Howland, except that witness was to receive $200 each year for collecting the rents of the building; cannot say whether these conversations occurred before or after the foreclosure sale to Isaac Taylor. (f. 83.) The negotiations fell through because I wanted a title in fee to one-half the property without conditions.

I went to Mr. Taylor and proposed to him that I 101
would take the entire property at the price agreed upon between Mr. Blake, him, and myself, and take the title in fee. He said if Mr. Howland would consent he would deed it to me. That without his consent he would not do it for that price, remarking at the time: "You know, Mr. Taylor, that is no compensation for that property." He told me at that

time how he was holding the property, and why he wanted to get it off his hands; that there was an ar-
102 rangement between him and Mr. Howland that the property should be foreclosed, upon a mortgage he held, for the purpose of perfecting the title: that Mr. Howland expected to have some one bid it off for him on the day of sale. He said he was holding the property for Mr. Howland; that he put so much money in it, and when Mr. Howland paid him his money and interest he was to deed the property to him. That he was in hopes and did expect Mr. Howland would make arrangements with some one
103 to bid it in for him at the sale, and relieve him from the care of looking after it. The reasons he gave me for wanting to get rid of it were that it had reached him that Mrs. Howland was reporting around the streets that people were saying to her that Taylor had got the property in his own hands, and that they would never get any benefit from it. (f. 83-95.)

William H. Jenks, testified: That he was a carpenter and joiner by trade, had never bought or sold real estate, except that he once held the title to the
104 land in controversy and to his homestead, and had no knowledge of any sales in the year 1863. This property is situate in the center of the business part of the city, and I think there is none better there, should judge it was worth in 1863 from $20,000 to $24,000. Had a conversation with Isaac Taylor before the middle of July, 1864, in which he stated that he held the property, and whenever the rents would pay his advances with interest, it should go back, he

stated that, as the arrangement he had with Mr. Howland. He made a remark that he had a perfect title 105
to the property. I moved into the jail sometime in July, about the middle or a little before, and the interview was before I moved into the jail and while I was living in my own house, that enables me to fix the time before the middle of July. (f. 95-104).

M. R. Teegarden, testified: I had a conversation with Isaac Taylor with reference to this property.

"It was in the fore part of March, 1863. I spoke to Mr. Taylor one morning as he was going down street past my house. Says I, I understand you 106
foreclosed the mortgage on the Howland block. He said he had, and said he had done it to secure himself. He then said that as soon as they paid him what he had advanced and interest it reverted to them. That was about all the conversation about it at that time. Afterwards, about the last of March or first of April, 1863, I had another conversation with Mr. Taylor. I think it was a couple of weeks after the first, or it might have been three weeks. I went down to Mr. Taylor's office to buy the prop- 107
erty. Mr. Taylor advised me to have nothing to do with it, as a friend of mine he advised me, for, says he, I have an agreement or arrangement with Mr. Howland that if they paid him up the principal and interest the property was to revert to them. He said the building was rented well, and he was applying the rents to the principal and he thought they would pay it up eventually. He then said that he could'nt give me a clear title to it any way, as he

108 had made that arrangement with them, and he advised me not to have anything to do with it or I might have trouble. He advised me to buy property that I could buy clear and unencumbered, and have no trouble with it."

I was buying, selling and owning property in Racine in 1863. This was desirable property, and worth in my opinion at that time from $18,000 to $20,000. (f. 104-111.)

Lucas Bradley, testified: Have just made an
109 examination of the Howland block, and estimated the probable cost thereof in 1857–8–9, including the cistern drain, sewer and outhouse, and in my judgment it cost about $21,100. I made the estimate on the basis of what I would charge to construct it. (f. 111–121.)

Thomas H. Davis, testified in substance the same as the last witness. (f. 129–137.)

James H. Kelley, testified: That he acted as book keeper for Mr. Taylor in his private matters and were
110 partners in business from '58 to '64. That on January 1st, 1863, I opened a book for Mr. Taylor giving an invoice of all his property in which an account was opened with each parcel of real estate separately, each being charged with the original cost and expenses subsequently, and credited with the income and the proceeds arising from the sale, and among these parcels of land there appears the property in question. The account in reference thereto is as follows:

(Page 10.) 111

Howland Building, Dr.

1863.			
Jan'y 1.	To amount for same.....	9,650	00
April 9.	" John G. Conroe's bill of iron and screws.....	5	32
" 15.	" iron for windows.....	1	30
"	" int. & profit for int. on investment to April 1.....	635	25
		$10,291	87

112

(Page 11.)

Howland Building, Cr.

1863.			
April 18.	By sale to Blake & Elliott...	10,000	00
	" rents from Jan'y to April—		
	" " Sandford and Tapley to April 1....	50	00
	" " Lyons and Adams to April 1.....	25	00
	" " Burch & B. April 1	82	50
	" " B. F. Weeks " 1	75	00
	" " Paine & Millett " 1	31	25
	" " C. W. Bennett " 1	28	12
		$10,291	87

113

Similar accounts appear upon the books in reference to each piece of property which Mr. Taylor then owned.

See the testimony of witness (pp. 48 to 51.)

Alvin R. Burdick, testified: Had a conversation 114
with Blake in the street at Racine after I heard of the conveyance of the Howland Block. "I said to Mr. Blake, I understand you have bought the Howland block. He says, yes, I have or have not. I have

the papers for it and Howland has the right to redeem it or the chance, or something to that effect, and he (Blake) says he probably never will do it or something of that kind. He said Howland was a good fanning mill peddler; a good agent for making
115 collections or something of that sort, that was the substance of the conversation as near as I can recollect it. It referred to Richmond W. Howland." (f. 154-159.)

Albert P. Dickey, testified: To a conversation with Blake which commenced about brick which he (Blake) was about to furnish to Osborn & Osgood to erect their building fronting on market square in Racine, which conversation was stated by witness to be in substance as follows:

116 "The conversation commenced in regard to brick. Mr. Blake said he was lending or selling to Osborn & Osgood some brick, that they might complete their building. This conversation was in the spring of the year. I think it was some time in the first of May, and I says to Mr. Blake: I understood you have been helping Mr. Howland to pay for the building, and have taken Mr. Taylor's interest in it; and Mr. Blake said that Mr. Howland's wife had been dinging or teasing him to advance money to Mr.
117 Taylor, to take it in the name of Blake & Elliott, and to become responsible to pay Mr. Taylor what there was going to him, and Mr. Blake said he had done it; and at the expiration of ten years, if the rents paid the taxes, and the interest and principal of the money then it was to be deeded back to the Howlands.

The word Howlands was used by Blake. Mr. Blake said that Howland was a hard-working man, referring to R. W. Howland, and industrious; and, on account of his wife, he wished to help him to save the property, or something in it. I told Mr. Blake 118
it was very kind in him, and Howland was a good fellow, and needed some one to assist him. I don't recollect of any further conversation in regard to that at this time, but there was some more in regard to the Osborn & Osgood brick."

I subsequently had a conversation with Mr. Elliott which was in substance as follows:

"I think Mr. Elliott was doing some repairs on the building, or seeing to them, at the time of the conversation, and I said to him: I understand you have 119
an interest in this institution. Mr. Elliott's reply was, that they had paid Mr. Taylor his claim on the building, and purposed to help Howland try to redeem it. That is as far as I recollect the conversation. I did not have but a few words with him.

R. W. Howland was the person referred to in each of these conversations. I have been and am now in the fanning mill business at Racine in opposition to Blake & Elliott and have had trouble with them. The conversations occurred in the spring of the year that 120
Osborn & Osgood built their block, before the first of May. (f. 159-165.)

A. P. Dutton, testified: As to conversations with Blake after sale to him, in substance as follows:

I was finding fault with Mr. Taylor, in my conversation with Blake, for selling the property. Mr.

Taylor told me what he was doing and what he was going to do with the property. I understood Mr. Blake to say that Mr. Howland was to have the
121 benefit of the property the same as if Mr. Taylor had held it. He spoke of his friendly feelings toward Howland, and thought he was as safe a man to hold it as Taylor was. The exact words I cannot recollect at this time, as it is so long ago.

The Howland referred to was R. W. Howland. (f. 165-170.)

John W. English, stated a conversation with Mr. Isaac Taylor as follows:

"He told me, I think, that he had a sheriff's deed of
122 it; he said he had had the property sold at public sale to perfect the title to it, on account of some liens or judgments, I dont know which. He said he had been carrying it since spring, I think, for the boys, and he wanted to get it off his hands, and any arrangement I made with Mr. Howland, either to take part of it or the whole, would be satisfactory to him. Our interview then ceased, and I went to Mr. Blake's place of business. and had an interview with him."

Also stated a conversation with Mr. Blake in De-
123 cember 1862, in reference to a proposed arrangement which fell through, by which he and Blake were to take the property from Mr. Taylor and carry it for Richmond W. Howland. (f. 170-186.)

Ellen W. Howland, wife of R. W. Howland, testified: That she had a conversation with the defendant Blake about the time of the transfer of the property to Blake & Elliott, in which he promised to see Isaac

Taylor and, if possible, obtain the premises, for the amount due Taylor and hold it until the rents paid the debt, and he afterward told me he had made the 124
arrangement. (f. 199-208.)

Silas F. Lefler, testified as to conversations with Blake & Elliott after transfer to them.

I can't tell whether I asked Blake the question myself, or whether he told me voluntarily; but at all events he told me that Blake & Elliott were carrying that property, and signified that it would pay for itself if the rents kept up, so that Howland, or the Howlands, would get it back in ten years or so. That is about the substance of his statement. 125

I think Mr. Elliott was in there having a conversation with Mr. Bruce about the leaking of the roof, and also about the price of the rent. I recollect Bruce asking him what was his price for the building, or what it was worth, and he said it was not theirs to sell, but supposed it was worth thirty thousand dollars, or it may be thirty-five thousand dollars; at any rate, I thought it a high price; and he carried the idea that all they wanted out of it was the money they had in it, and stated what that was, namely, nine 126
thousand six hundred dollars, or ten thousand dollars at most, and then turned and went out. He had a little account-book in his hand at the time, and carried the idea that he had to keep a separate account of his receipts and expenditures on that building. I don't know that he used those words, but he had to keep a strict account with that building. My impression is that I asked him what that was, and I un-

derstood from his answer that it was because of an
127 agreement between the parties.

The Howland referred to in these conversations was R. W. Howland. I have had trouble with the defendants in this suit. (f. 208-215.)

ABSTRACT OF DEFENDANTS' TESTIMONY.

Elbridge G. Huggins, testified: Have dealt in real estate in Racine for the past 26 years. In 1857-8 property went down about as low as it could go, and began looking a little better in 1863-4. In 1866 I bought the "Huggins House" which is on the same
128 side of the street as the Howland block, about 60 feet from it, 70 feet front, four stories high, with a basement, and finished equal to the Howland block for $6,700. The buildings on the west side of Main street rented for 1-3 more than those on the east side and many on the east side could not be rented at all and remained vacant. The depression in real estate was caused by the crash in 1857, special assessment for war purposes and a large city indebtedness, about $600,000. In June 1862 the Howland
129 block was worth $7,000, perhaps $8,000, do not think a person could be found who would have paid $8,000 in cash for it at that time.

I bought and sold property in the same block, with the Howland building, sold a house in 1857 for $1,000 and bought it in 1864 for $200, sold a lot for $400 or $450 in 1856 and bought it back in 1865 with a house on it for $375, bought a house and lot in the same block in 1861 for $375 and sold it in 1868 for $1,000. The hotel when I bought it rented

for from $1,600 to $1,700, it now rents for $2,200, 130
perhaps a trifle over. (f. 240-247.)

John H. Palmeter, testified: My principal business has been buying and selling real estate in Racine for the last twenty-eight years, and I have been familiar with prices. Owing to wild speculation in lands, general stagnation in business from the hard times of 1857-8 and heavy city indebtedness, real estate was very low in Racine from 1857 to 1860. I think it was lowest in 1860 and 1861, it was a little better in 1862, but property would not then bring more 131
than one-half the cost of the buildings. Property on the west side of Main street rented for about 1-3 more than similar property on the east side; there were a good many vacant stores in Racine. In 1863 the Howland block was worth from $8,000 to $10,000. (f. 247-250.)

B. F. Weeks, testified: Rents from 1862 to 1870 were from 25 to 33 1-3 per cent. higher on the west side of Main street than on the east side. I rented a part of the Howland block for a dry goods store 132
from 1862 to 1865, then moved to the other side of the street because the location was better for business, and I was willing and did pay from 40 to 50 per cent. higher rent. (f. 250-254.)

A. O. Burch, testified: From Fourth to Fifth street, on the west side of Main street, in the block opposite the Howland building is the business center of Racine. I am a member of the firm of A. O. Burch & Co. We have occupied a store in the Howland block since 1860; we paid $100 the first 133

year, $300 in 1861-2, and $382.50 in 1863-4. In those years the business on the east side of Main street was very light, and almost all the stores small, on the west side the rents were high. I would have sooner paid $600 for a store on the west side, than have one on the east side for nothing. We only paid $100 the first year because Mr. Taylor could not rent the store. Once when I was paying the rent to Mr. Taylor, I think after the mortgage fore-
134 closure, he made this remark, "he wanted to know if we didn't want to buy this block from him; and, not having the means, we replied, that there was no use talking about it, and we couldn't think of it, that was all the offer he made to us and all that was said." (f. 254-262.)

John Tapley, testified: I was postmaster at Racine, from April, 1861 to May, 1869. I rented the main store room and cellar in the Howland building for the post-office at $200 per annum in 1862-3. "About
135 the time it was known I was to be postmaster, Mr. Taylor came to me and wished me to rent a room in his building, stating that he would make the rent reasonable in consideration of its being on the unpopular side of the street." In 1862–3 there was very little business of a mercantile character on the east side of Main street while a large business was done on the west side. (f. 262-265.)

Henry T. Fuller, testified: I was a member of the law firm of Strong & Fuller; we were attorneys for
136 Mr. Taylor in 1862 and prior to that time. I acted as legal adviser for him from 1848 until his death.

Most of the business has been done on the west side of Main street. The real estate market in Racine from 1858 to 1866 was in a very depressed state, few sales were made and those at very reduced prices. The city was indebted to a large amount. Public enterprises suffered materially from the general depression of business and scarcity of money, mercantile and manufacturing business was considerably depressed. Business men had borrowed a large 137
amount of money, which was being called in by parties loaning the same, and many forced sales were made during that time on foreclosures and executions. We foreclosed mortgages during that time on the following parcels, the Durand property, corner of Main and Third; the Fallows property, east side of Main between Second and Third; the Raymond property opposite the last piece; the Howland building on the east side of Main in favor of Isaac Taylor; the Griswold property, east side of Main corner of 138
Third; the McClurg building opposite the Griswold property; the Baker house, just south of the Howland building on the east side of Main; and the corner lot on Fifth and Main. Most of those mortgages were given for borrowed money and the owners of the mortgages bid in the premises. From 1858 to 1866, our firm, Strong & Fuller, became purchasers for our clients and in many instances sought to make sales, and used more than ordinary exertion to make sales at the request of our clients, and found it very 139
difficult to sell the property purchased at the foreclosure sales, and in some instances we sold for less

than one-half of the value of the property as regarded in 1856 and early in 1857 perhaps. I can name the Baker House as one piece of property. The building cost, I think, nearly double what we got for it. We were unable to rent it at any reasonable percentage. It was in the market for sale for several years. The Durand property was in like condition and sold
140 for a very low price. Our firm did a very large majority of Mr. Taylor's law business, and I myself did a very large part of his business, and was his confidential legal adviser. During the foreclosure of his mortgage on the Howland building, I did not know or learn from any person that there was any agreement between Mr. Taylor and Eugene Howland, whereby Howland was to retain an interest in the property, or to have the property when the rents would pay it, or on the happening of any other con-
141 tingency. I did not learn any fact which led me to believe that it was not an absolute foreclosure. I had no intimation or knowledge of any agreement or understanding of the kind. On the contrary Mr. Taylor urged me to prosecute the forclosure for the purpose of protecting his interests. I communicated the fact to Mr. Taylor, that we were perfecting a lien on the property, for material furnished. He became anxious concerning the lien, being a prior lien to his mortgage. and urged prosecution. On the
142 sale the property sold for $9,300. My impression is, that it could not have been sold for that price at the time. I had frequent conversations with Mr. Taylor on the subject, and we agreed that the premises were

not ample security for the liens upon it. Mr. Taylor was very cautious in business matters, as every one knows; scrutinizing every transaction thoroughly himself, whether it was transacted by himself, or by others for him. When transacted by himself, he would frequently come into the office and ask the legal bearing of propositions before closing the transaction. 143
He seldom, if ever, entered into a contract hastily; always taking care to understand its terms; and in all the business that I transacted for him, it was seldom any misunderstanding occurred between him and the party contracting with him. In all matters of time his general habit was to reduce business transactions to writing. In matters to be accomplished immediately, that is, within a few days, he would often require a memorandum in writing. I never knew him to make a verbal contract concerning real estate, 144
where it involved time, except in some leases for a short time. In many instances where Mr. Taylor was interested in real estate, he would keep a debit and credit account with each piece, showing the expenditures and receipts. It was so with mortgages in very many instances, which he would take for moneys loaned. It was so in his lumber business, keeping an account, debit and credit, with the mills where the lumber was manufactured, separate from the yards at Racine and other places, and a separate 145
account for each yard at which sales were made. (f 265-275.)

Warren J. Durham, testified: From 1860 to 1864 I was engaged with Strong & Fuller in the practice

of the law at Racine. I had knowledge of the Taylor foreclosure, some of the papers are in my hand-writing and most of the others were drafted by me. I had no knowledge or information that the foreclosure was not an absolute and unconditional
146 one in the ordinary form. I never received from Mr. Taylor any knowledge or intimation, either before, during, or after the foreclosure, that Eugene Howland was to have or retain any interest in the property foreclosed on the happening of any contingencies. I knew Mr. Taylor quite well and drew the deed from him to Blake & Elliott, and the note for the purchase money. Mr. Blake and Mr. Taylor called concerning the business, and perhaps Mr. Elliott. The deed was acknowledged before me, I
147 did not receive any knowledge or intimation that the sale and conveyance were not absolute and unconditional. In 1861-2, the real estate market was very dull in Racine. (f. 276-279.)

Thomas J. Emerson, testified: From 1845 to 1865 I was dealing to a considerable extent in real estate, at Racine. After the panic, in the fall of 1857, there was a general depression in the real estate market all over the country, and from a combination of circumstances was extremely depressed in Racine, from
148 1857 to 1864. There were very few sales, except forced sales up to 1864. In that year I made the first sale I was able to make in four years of property, that was before that time and is now valuable. $10.000 dollars is a great deal more than I should have been willing to give for the Howland building

in 1863. It was one of the first sales after the panic of 1857, and was generally looked upon as a very successful sale for Mr. Taylor to make. It sold high. I considered it a chance sale. The west side of Main street was the better one for business. In the 149
fall of 1862 there was only one tenant in the Durand block, the second and third buildings from the corner were all empty, the Union block had only one store occupied, part of the Baker house was unoccupied. I rented the first floor of the Commercial Bank building for $100. I was quite intimately acquainted with Mr. Taylor. I did not hear him say anything in particular about the sale to Blake & Elliott; but about getting his money out of it and the rentals. His idea was to get the post office there, and the city 150
council, and gradually, through them, to fill up the building and get it rented. He said when it was rented he would get his money back, so that he would not lose anything. He thought, at one time, he was going to lose considerable money there. After the sale, in a conversation with me, he spoke quite exultingly that he had accomplished his end, and respecting the sale to Blake & Elliott, and the responsibility of the parties, he was as well satisfied as though he had his money. (f. 279-283.) 151

Herman Warner, testified: From 1855 to 1860, and from 1863 to 1873 I was engaged in Racine in selling, renting and dealing in real estate. The real estate market was very low from 1839 to 1865. Property, in many instances, would not sell for more than one-third or one-half its cost. Sales were very

few. I made none except one of my own property. I abandoned the real estate business in 1861, 1862, and 1863 because the market was so stagnant, that
152 nothing could be done. In 1862-3 there was no market value to real estate; all you could do was to sell for what you could get. I should think $10,000 all that the Howland block could be sold for in 1863. The west side of Main street is the better one and always has been, rents are higher and it was the business side of the street. Small dealers and small shops were on the east side. Stores on the west side are worth from $150 to $250 a year more than on the east, and the difference was greater in 1862-3.
153 Do not know of any business property being sold in those years for a price proportionately larger than the Howland building brought. (f. 283-289.)

George Bull, testified: Real estate was very depressed in Racine from 1859 to 1863. In 1861 I was in the dry goods and grocery business on Sixth street. Isaac Taylor came and offered me a store in the Howland block free of rent if I would move there, but I would not accept it as it was out of the way of business. The west side of the street was good but
154 the east side was not. (f. 289-295.)

Frederick W. Bruce, testified: I am a member of the firm of A. O. Burch & Co. We occupy a store in the Howland building; first rented it from Isaac Taylor; he stated in our store that he thought it would be a good thing for us to buy the property. He rather advised us to buy it, but I cannot state what the conversation was. He offered to sell it to

us if we would buy it. The west side of Main street has always been the better one, rents there were worth double the east side, for dry goods, gro- 155
series and business of a similar kind. About 1862 and 1863 we paid $300 a year rent, I would then sooner have paid that rent for a store on the west side than have our store for nothing.

I do not remember any conversation between Mr. Lefler, Mr. Elliott and myself, about the Howland building or the rents. I had a conversation with Mr. Elliott about the building in 1865, on the 24th or 25th of June, in our store.

Mr. Howland at that time was trading with 156
us in the store, and had been for some time prior to that, He paid his account by orders from Blake & Elliott. It was about the time our rent was due, and Mr. Howland brought us an order from Blake & Elliott for $50. There was still a balance due on his account, over and above the $50.00, of $60.37, and I wanted Mr. Elliott to give an order, or allow it all to be charged up to Blake & Elliott. He objected, saying they had overpaid him, and I said I supposed they would pay any account that Mr. Howland might 157
have and be safe, on account of the interest which Mr. Howland had in the building. After talking some time, he permitted it to be charged up, but told me it was the last they should be responsible for, and that Mr. Howland had no interest whatever in the building. (f. 295-301, and 452-457.)

James T. Elliott, testified: I am one of the defendants; have lived in Racine since 1858, and have

been a partner of Lucius S. Blake. I knew Isaac
158 Taylor, did not know Eugene Howland, have known R. W. Howland since 1859 or 1860. Mr. Blake and I purchased the Howland block in April, 1863, from Mr, Taylor, for $10,000 ; $2,500 in cash, and the balance evidenced by ten promissory notes of $750 each, payable every six months, with, 7 per cent. interest, secured by a mortgage upon the premises. We have paid the whole purchase price. The contract for the sale was made in our shop, Mr. Taylor, Mr. Blake, Mr. Bunce and myself were present. I had not
159 talked with Mr. Taylor about the purchase before this, but had with Mr. Blake. Mr. Taylor asked us if we would buy the property. He gave us his price, and the terms of payment, and we concluded to take it. There was but little more said about the matter, although I asked him if the title was perfect and he said it was. He furnished us with an abstract of title. The papers were drawn in Strong & Fuller's office. At the time of the purchase the property was occupied at a rental $1,773.70. I had never
160 heard either before, or at the time of the sale, that Mr. Taylor had not an absolute title to the property ; he told me he had a good title, and I never heard anything to the contrary. I had no knowledge or information from any source, that Eugene Howland had any interest in the property, after the foreclosure sale. I never heard that Mr. Taylor had an agreement with Eugene Howland, or with R. W. Howland as his agent, or otherwise, by which Taylor was to hold the property in trust for Howland until the rents

should cancel the indebtedness to Taylor, and that then 161
the property should be reconveyed to Howland. R. W. Howland worked for us in 1863-4-5. I knew him intimately. He never, in any way, informed me, before the commencement of this suit, that his brother had any interest in the property, and he never talked with me about it at any time. I kept the books of the firm, and had frequent business transactions with R. W. Howland. At the time we purchased I had no knowledge or information from any source, of any agreement between any parties, where- 162
by Eugene Howland was to have the property back on the happening of any contingency, and I had not at the times the notes were paid. Property rents for about one-third more on the west side of Main, between fourth and fifth, than on the east side, and the difference was greater in 1862 and 1863. There was a great general depression in real estate at Racine during that time. When he was at our shop, Mr. Taylor suggested that we should meet at Strong & Fuller's office the next day, to draw the papers, 163
which we did. There were present Mr. Taylor, Mr. Blake, Mr. Fuller, Mr. Durham, myself, and I think Wm. C. Marshall and his wife were there. We transacted no other business there at that time. During the conversation about the purchase, Mr. Blake and Mr. Taylor sat down on a bench and went to figuring. Taylor told him the property rented for about $1,700, and would be a good investment, he also spoke of the roof leaking. We tried to get
longer payments, and talked considerably about it. 164

but the bargain was finally closed on Mr. Taylor's offer. I never had a conversation with A. P. Dickey, in which I said we were holding the property for Howland, or words to that effect. I never heard from any source, prior to this suit, that Eugene Howland had any interest in the property. I have offered several times to sell my half interest in these premises for $7,500. I never told A. P. Dickey that Mr. Blake and I had paid Mr. Taylor's claim and proposed to help Howland redeem, or words to that effect in substance. Never had a conversation with S. T. Lefler at the store of Burch & Bruce, in the presence of Mr. Bruce, or otherwise, about the building or rents. Mr. Lefler used to work for us, we discharged him since that time our relations have not been friendly. (f. 301-329, and 465-467.)

165

John Kranz, testified: I have been acquainted with the price of real estate in Racine for the past twenty-nine years; it was very low from 1860 to 1865. In 1857 I bought a twenty foot lot with a frame building on it for $2,000 and paid $600 down; after the panic I wanted to give up the bargain and lose the $600 but the vendor would not consent; this lot was from 100 to 120 feet from the Howland block on the same side of the street. In 1860 and 1861 I used a room in the Baker House just south of the Howland block, rent free as it could not be rented. From 1861 to 1864 it was almost impossible to sell land in Racine or to raise money upon it (f. 338-340.)

166

167 *Albert G. Knight*, testified: I have been a real estate and loan agent at Racine for the past thirty-

eight years and have an abstract office. Have been during that time well acquainted with the value of real estate in Racine, and have known the Howland block since it was built. From 1859 to 1865 the real estate market was very depressed. In 1863 the Howland block, according to general opinion, was worth about $12,000. I would not have been willing to give more than $9,000 for it with a view to selling or for the purpose of speculation. I knew Isaac 168
Taylor in his life-time, I regarded him as one of the most thorough and competent business men I ever met. He was remarkably particular in making any bargain or agreement; very careful not to leave anything unexplained; one of the most particular men in making a bargain that I ever knew. I found it difficult to draw an agreement for him that was sufficiently precise to please him. All his business transactions that I knew anything about were reduced to writing. I drew a deed from Mr. Taylor to Charles 169
Clement of a lot adjoining the Howland block and I think it included a part of the wall or the use of the wall of the Howland block. (f. 340-347)

John Elkins, testified: I have been acquainted with the prices paid for rent between fourth and fifth streets on Main since 1852. In early times rents were twice as high, on the west side as the east and have averaged fully one third more. (f. 353-357.)

H. S. Durand, testified: I have lived in Racine for thirty-one years and have had a general knowledge 170
of the value of real estate there. From 1859 to 1864 the market was entirely unsettled and real

estate was very much depressed; during that time there was no demand for real estate business property particularly—for investment and if sold at all, it was sold at very low prices—very much less than the improvement cost, if it was improved property. It was difficult to sell at all for cash. I had a block of brick buildings on the corner of Main and Third
171 streets, which with the ground cost me from $22,000 to $25,000, which I tried very hard to sell, to protect a mortgage of $8,000, and to save something over, but was not able to do it, and it sold for something less than $8,000, at auction on foreclosure of that mortgage. I had also a half interest in property on corner of Wisconsin and Third street with a large warehouse on it, that cost me over $12,000, it sold for less than $5,000 on a foreclosure sale.

In the fall of 1857 there was a general revulsion
172 in business throughout the country, which depressed real estate nearly everywhere. The city of Racine had incurred a large indebtedness for the building of a railroad—of $300,000, and for other purposes about $100,000 more. In 1859 the railroad company failed; the $300,000 stock in the same owned by the city became worthless. The business of the town fell off very rapidly—the mercantile and produce business. Money was very scarce, and there was a general discouragement of the people in reference
173 to the future of the town. Quite a good many business men moved away. The interest on the debt was not provided for, and it was increasing very rapidly, and it was apparent at about that time that

it never could be made much of a produce-market or a trading point, or it was felt that it would not be —that, with the war, with its uncertainty, were among the things that depressed property.

I think the rise in real estate was comparatively small, until the people started to liquidate the city indebtedness, and there was considerable effort and 174
success in the increase of the manufacturing business of the town, and after the indebtedness was largely compromised, and manufacturing business improved, there was renewed confidence in the future of the town, and real estate of all kinds improved some, but I think mercantile property, *of* stores and business property of that kind, has improved the least up to this time; and I know of very little that, I think, would sell to-day for anything near what it cost. There was very little improvement until after the close of 175
the war.

The Howland block in April 1863 was worth from $8,000 to $12,000, depending, in my judgment, upon other interests which the purchaser might have had in the city. I heard at the time, what it sold for; it appeared to me then that it was a comparatively full price. It is worth about $15,000 now.

I knew Isaac Taylor from the fall of 1843 until he died. I was very intimately acquainted with him. He was my next door neighbor. He was a very 176
sharp, thorough, careful, exacting, cautious, but a very honorable and honest business man. He was unusually particular in all business transactions. He was what we call a very exact man. He had a very

peculiar faculty of making property available, and to do so he had large means to aid his tenants.

The business on the west side of Main street has been much larger than on the east side; all the dry goods houses are on the west side. In my opinion
177 in 1862 and 1863 to make the Howland block a good investment at $10,000, it should have a prospect of permanent rental of from $2,500 to $3,000, with taxes and insurance, wear and tear. The risk of purchasing property in Racine in 1863, in the then condition of things, together with the great value of money at that time and the opportunities of investment in real estate, and in view of the rapid depreciation of a building used as this was and must be, to make it pay, I think the gross rental should be at least 25 per
178 cent. (f. 357-369.)

Charles L. Bunce, testified: I was in the employ of Blake & Elliott some twelve or fifteen years. I knew Isaac Taylor in his life-time. I was present at a conversation between Mr. Isaac Taylor and Messrs. Blake & Elliott, concering a sale to them of the Howland block in Racine, the conversation was held in the shop, in the second story.

Mr. Taylor came into the shop in the morning, came up stairs—Mr. Blake was not there—and he
179 spoke to Mr. Elliott and said, what about buying that property, or how is it about buying that property? Mr. Taylor said, I suppose Mr. Blake has spoken to you about it. Mr. Elliott says, how about the title? Mr. Taylor says, good. At that time Mr. Blake comes in. Mr. Blake and Mr. Taylor sat down on

a sawhorse near me, Mr. Elliott went to another part of the shop. Mr. Taylor then commenced figuring the rent of the building, and he figured the rent at $1,700. Mr. Taylor says to Mr. Blake, you see it is a good investment setting aside the rise in the value 180
of the property. They all then left the shop. I do not recollect anything else that was said.

Luscius S. Blake, testified: I am one of the defendants, and have lived in Racine since 1836; have known R. W. Howland about twenty years. Knew Isaac Taylor from the time he came west until his death, about twelve years.

I know Horatio T. Taylor, and have known him twenty-five years; am acquainted with lot 12, in block 18, in the city of Racine, on which the How- 181
land block stands, and have known that block ever since it was built; I have had knowledge of real estate in Racine for thirty years; I have bought and sold property there; have bought more than I have sold, but have sold considerable; in 1862, 1863 and 1864 the real estate market there was very low in price; I have known of sales of property there for less than the cost of building; I knew of the sale of the house now occupied by J. I. Case, I think it was sold for $6,500; I think $12,000 would have been a 182
fair valuation for that property in 1856; now I think a fair valuation of it would be about $20,000; in 1864 the McClurg building would not have brought, I think, more than 50 per cent. of its cost; it is on the east side of Main street, corner of Third; it is considered the finest building in the city; I have been engaged to

some extent in erecting brick buildings for stores in Racine, and am acquainted with the cost of building. I do not think there would have been a great deal of
183 difference between the cost of the Howland block and the cost of the Huggins House.

I never had a conversation with Isaac Taylor and R. W. Howland about joining Horatio T. Taylor in taking title to the Howland block for the benefit of Howland, when we were all present. I did with Isaac Taylor and with Horatio T. Taylor; it was some time in the spring of 1862, in May or June, before the foreclosure sale. I think I talked with R. W. Howland about it in the presence of Horatio T. Taylor
184 at the latter's store. Mr. Howland had told me that Horatio T. Taylor would join me in the purchase of the property, they thought, if I would assist. I think it was the next day that I met Mr. Howland and Mr. Horatio T. Taylor at his store, and there the matter was talked up. There was no agreement come to at that time, and in talking with Mr. Horatio T. Taylor in the absence of Mr. Howland, Mr. Taylor told me that he had finally made up his mind to have nothing to do with it, as he did not like the arrange-
185 ment. There the matter ended as far as that negotiation was concerned. I think that we were to advance $2,000—that is, $1,000 each. We were to take the title at the foreclosure sale, and Mr. H. T. Taylor was to take charge of and look after the property. The understanding was then that we were to take the property, hold it, and collect the rents a certain number of years—I think it was five,

and it might have been six—and give Mr. Howland that time to redeem it—Mr. R W. Howland. There was no talk or conversation that the arrangement 186
was made for the benefit of Eugene Howland. I did not know him in the transaction at all. I had no interview afterward with H. T. Taylor and R. W. Howland, when we three were present. I had a talk with H. T. Taylor, but not in the presence of Howland. I had no talk with R. W. Howland about making a similar arrangement with one John W. English. I never had a conversation after the foreclosure sale in June, 1862, with H. T. Taylor and R. W. Howland, or either of them, about taking 187
the property and carrying it for the benefit of Howland. I think H. T. Taylor would not enter into the arrangement because he wanted the title to the property in himself. I had no conversation with Isaac Taylor or with R. W. Howland after the foreclosure sale, about taking the title to the property for the benefit of R. W. Howland or Eugene Howland, or for any other person than Mr. Elliott and myself. At the time of our purchase, I did not know that Isaac Taylor had agreed with R. W. Howland to bid 188
in the property for the benefit of Eugene Howland; and I did not hear from any source that Isaac Taylor had made an agreement to take the title to the property through the foreclosure, and hold it until the rents should pay the debts, and then deed it to Eugene Howland. I did not know at the time that Isaac Taylor had anything less than an absolute title in fee to the premises; he said that he had a title to

the property, and would give a warranty deed; that
189 he had paid up all the taxes, and the title was perfect in him. I never agreed with R. W. Howland that Mr. Elliott and myself would buy this property from Taylor and hold it until the rents should pay for the property and improvements, and then deed it to Eugene Howland; he never requested me to do it after Taylor bought at the foreclosure sale, and I never knew from him or any one else that he claimed any interest in the property after the foreclosure sale and before the purchase. I never knew and never
190 heard prior to the purchase, that Isaac Taylor had an agreement with Eugene Howland or Richmond W. Howland, as agent of Eugene Howland, or otherwise, that Taylor was to hold the property in trust for Howland until the rents should cancel the indebtedness from Howland, and when such indebtedness was paid the property was to be re-conveyed to Howland. We bought in April, 1863; the price was $10,000; $2,500 cash and notes for the balance with interest, the notes were afterwards paid. At the
191 time of the purchase I did not understand that we were buying the property for the use or benefit of any person other than ourselves. I presume I have met Eugene Howland, but do not know him, and never did any business with him. The bargain between Mr. Taylor, Mr. Elliott and myself was made at my shop in Racine, we three, Mr. Bunce and a man by the name of Thorkelson were in the room. Mr. Taylor had spoken to me the day before about the property. I think he had spoken to me twice

about it; he said he wished to sell the property and invest his money in Chicago where he was building 192
an elevator. I cannot swear that all our notes were discounted by Mr. Taylor to raise money to invest in the elevator, but I think some of them were; there were some deductions on interest through payments before due. I did not have a conversation with R. W. Howland about buying this property from Taylor some one or two days before the purchase. Between the time of the foreclosure sale and our purchase, I had no conversation with R. W. Howland about the proporty. I never agreed to buy the prop- 193
erty from Taylor, and hold it until the rents should pay for it, and then deed it to Eugene Howland. In the conversations between Mrs. Howland and myself, and between H. T. Taylor, R. W. Howland and myself, the contemplated purchase, if made, was to be for the benefit of R. W. Howland. I bought the brick yard spoken of by R. W. Howland on a foreclosure of a mortgage, given, I think, by Mr. Jenks and Mr. Howland's brother, Jepth. It was foreclosed by Moses M. Miller; Mr. R. W. Howland was 194
making brick on the property at the time, or had it in charge, and it was to be sold. I think the day of sale, or a few days before, he came to me, and wished me to let him have the money to pay the mortgage, or bid off the property at the sale, as he had personal property there, and was making brick and thought he could pay for it. I don't recollect the exact time he wished me to hold it. I bid off the property for somewhere about $300 to $500, I think,

195 and held it about seven years. He never paid me for it, and I sold it to Mr. George Q. Erskine. I think there was a surplus after paying the money I had advanced on it of $60 to $70, and I accounted to Mr. Howland for that surplus, whatever it was.

I never agreed with Eugene Howland by Richmond W. Howland, that Elliott and myself would keep an account of the rents of the Howland block, the expense of repairs, and the amount paid for insurance and taxes and re-convey to Eugene Howland
196 when the property should be paid for, and I never kept any such account. I never had a conversation with R. W. Howland at the back of the shop under an old shed, in which I agreed to take and carry the property for Eugene Howland We borrowed the $2,500 paid in cash, upon our note at the bank. Before this suit I never heard any one claim that Taylor bid in this property for Eugene Howland. I do not think the Howland block would bring $15,000 in money to-day.

197 I never had a conversation after the foreclosure sale or our purchase with either S. F. Lefler, A. P. Dickey, Mr. Burdick or A. P. Dutton, in which I stated in substance that we were carrying the Howland block for the benefit of Howland or were holding it until the rents paid us, or words to a similar effect, never had the conversations stated in their testimony. I have scarcely spoken to Mr. Burdick or A. P. Dutton in years. S. F. Lefler used to work for us, he was dismissed from our employ and our relations since then have not been friendly. J. W.

English and I never had any business together in 198
regard to the Howland block, he is not a man with whom I would be willing to be associated in business to the amount of $10,000. Never had a conversation or any negotiations with J. W. English with reference to purchasing or holding this property as detailed by him. I had a conversation with Mrs. R. W. Howland. I never promised her to advance the amount due and carry the property until the rents paid the debt. She asked me to advance the money and hold the property for the benefit of R. W. Howland, and 199
I told her I would not do it. I did not see Mr. Taylor afterwards and report to her that it was satisfactory, and I would advance the money and do as she requested. The conversation with her was at my house.

She came up to see if I would not buy the property or advance the money, take the property and hold it for a certain number of years—I don't recollect now the number. I told her, in that conversation, that I would not do it. I told her that Mr. Howland 200
was owing me then on a similar arrangement for a brick-yard, and that he never had paid me, and I never would take any more property in that way; and that if Mr. Taylor would sell me the property I would buy it, if I could get it for what it was worth. She then said it was lost to them, as Taylor was going to sell it to a party in Chicago, and that if I would buy it, if there were anything made out of it, she would rather I would make it than any one else. That was the drift of the conversation, and about all 201

that was said at that time. My wife was present at
202 this conversation, and, I think, our hired girl.

I saw Eugene Howland in Watertown, N. Y., in April last. He said he had put some $1,600 or $1,700 in the building but R. W. Howland thought it was only about $1,300. Also, that if he succeeded in this litigation, he would dispose of the money to the persons who had claims upon the building, their proper proportion. (f. 378-421 and 457-464.)

Richmond W. Howland, testified: Came to Racine in 1849, taught school until spring of 1850 and then
203 went into book and stationery business with Rev. A. C. Barry, after about eight months we failed. A. S. Barnes & Co., were heavy creditors, we sold to their traveling man Knapp, for his note over their claim. Attachments were issued and the sale claimed fraudulent. Mr. Hardy in behalf of my father finally settled Mr. Knapp's claim and the attachments. He got a considerable discount for cash. The other creditors were not paid; their claims amounted to from one-third to one-half of the whole. I then
204 worked for Hardy for $50 a month, until he went home and settled with father. The business was afterwards carried on in the name of Howland & White and Howland & Adams. I managed the business for my father in all these firms. Howland & Adams made an assignmet in the winter of 1858. The creditors were divided into three classes, the 1st and 2nd were paid in full, the 3rd received nothing. The last class included common bills of purchase that had not matured. Eugene Howland was a creditor;

we transferred collaterals, from $500 to $1,000 to 205
him for security, before the assignment was made. I was arrested in a tort action as the real party in interest in the firm. During all this time my father was the Howland in the business and I was acting as his agent. All the old judgments against A. C. Barry & Co., are against Mr. Barry and myself. The title to the place where I now live and to a house and lot in Racine is in the name of my wife; she had no separate property; it was all acquired from our joint earnings. I have procured the at- 206
tendance of most of the witnesses in this case for the complainant.

George W. Slauson, testified: I am a member of the firm of Murray, Slauson & Co. Mr. Kelley became a member in 1862 or 1863. We have occupied the same office for many years. There are two rooms in it, one a front room, the other in the rear. It has been so divided since it was built. In 1862 there was no open space in the partition except the door. There is now an aperture in the partition aside from 207
the door. It was put there some time in 1866. Prior to that time the rear room was used for storing the surp'us stuff of the office, and for storing boxes of paper and books. (f. 450-452.)

George Q. Erskine, testified: I know Eugene Howland, saw him frequently about 1859 or 1860, before he left Racine. He told me he regarded his property in Racine as lost; that he had sent money to Richmond from California at different times and Richmond had used it in the building somewhere, 208

and that he regarded it as all lost, or in substance to this effect, and that he had got to start in life again. I won't undertake to say that is what he said verbatim, but he frequently talked to me in that way, and I recollect his stating that he had worked very hard in California a number of years—I think it was five —and his property was gone and he had to start anew. I have heard him talk a good deal on that subject, but think that is about the substance of it.
209 He said he was in debt and had no means of paying his debts, and he didn't know what to do. I recollect of his saying he thought he should go to California and try to get a start again. (f. 473-475.)

Eugene Howland, testified: I am the complainant, and live in Watertown, N. Y. I know Mr. Blake, saw him some 15 or 16 years ago; never had any acquaintance with him. Do not know as I ever knew Mr. Elliott. First went to Racine in the spring of 1850, remained there about ten days. When I
210 left home took some $250 with me, spent $50, and loaned $200 to my brother Richmond W. He gave me no note or due bill. Next visited Racine in the spring of 1852; took $175 with me, and used it in fitting out for California. I did not buy any property at Racine. I did not authorize any one to buy any for me at that time. I do not remember that I ever authorized any person to buy lots 3, 4 and 12, in block 18, first ward, Racine Wis., for me. I think the three lots were bought before I went to Califor-
211 nia, and deeded to me. I did not know of the purchase at the time, or before, but was told of it after-

wards. I could not say who told me. I did not pay any part of the purchase money. I lived at home until I was 25 years old, and never had drawn any money from my father except the $250 and the $175 mentioned before. I suppose there was my due from home more than the $500 paid down on the purchase-money. I can't tell who paid the $500. I don't remember as Richmond ever told me who paid the $500 down. I understood that there was a mort- 212
gage given for the balance of the purchase money. I sent money to my agent at Racine, to the amount of—I don't know as I can give the exact amount, I should think some $1,700; it was sent when I was in California, about the year 1855, but am not certain. It was sent after I had determined to build; a portion of it, I think—I think the most of it—was sent after I had determined to build the block. I took more than $1,700 to Racine. I gave it to my brother, but how it was used I could not say; took a 213
draft of $600, think it was in 1857 or 1858, when I come from California. It was borrowed by me of Phineas Hardy. Richmond W. was building the block at the time. It was not borrowed for Richmond in the Book business. The whole sum borrowed by me in person, of Mr. Hardy, was $600. I never repaid Mr. Hardy. That was all the money I think of that I personally took or sent there. Richmond had a power of attorney to do business for me. I was last in Racine 15 years ago last Novem- 214
ber. That is the last time I was ever there.

I thought if the rents could be saved and applied

on the indebtedness, the building could be saved in time. Considering what I understood the building cost, and the value of the land, I thought there was quite a property there. I had hopes at that time of saving it. I went to California after that. I received a copy of the summons and complaint in the case of Isaac Taylor against me and others, to foreclose the
215 mortgage. I think the papers were destroyed. After I received those papers, and before this suit was commenced, I did not write to Richmond W. Howland. I did not receive any letters from him in regard to the property. I first learned, last summer, in June, that Blake & Elliott had taken title to the property conditionally. I learned it from R W. Howland; saw him at my house. We did not figure up our interest at all. I don't know but I stated that I had sent $1,700. I think he said he didn't
216 think I had sent so much; something near that amount. He did not say about what he had put into the property. Before I went to California, the last time, R. W. Howland asked me to deed the property to his wife. I told him I would not do it. Before this my brother said to me that Blake said that I would prove traitor to him, and throw him out of everything. I told him I had never betrayed my trust anywhere. At one time I said to him, if he would select some good man I would surrender
217 things up to him. I don't remember what reply he did make. When he said that Blake said that I would prove traitor, he carried the idea that I would not pay him for anything he had done for me; he

had acted as agent in erecting the building, his labor, etc, that is what I supposed he meant I have never paid him anything for his labor. R. W. Howland gave as a reason for coming here last summer that Blake & Elliott had bought the building conditionally; after the rents had paid up the obligations against the building it should come back to me 218
again, and they refused to give it up, and he told them there would be a reckoning. He said the rents had amounted to $10,000 more than the indebtedness. He said he was obliged to commence suit to get my rights. He said he wanted to see me before he commenced the suit. I told him if things were as he stated I was willing he should commence a suit. He said there had been a reserve in the Taylor sale, and the same in the sale to Blake & Elliott. I thought if it was so it was right for me to try and 219
get my rights. He said he wanted to see me, as he did not know but they would come down and try to settle with me, and I not knowing how the arrangement was, might settle in a way that would not be right. I told him I would not settle with them. I might have settled, I told him, if I had not seen him. I told him I wanted each and every one to have their rights, as far as it could be divided. I had reference to those he had borrowed money of to erect the building. I mean Kingsley, Erskine, and all who 220
had furnished anything toward the building. I think I told him I wanted pay for the money I had furnished. Do not think I told G. Q. Erskine that all I had was lost in that building or words to that effect. I

did not save anything while in California; all the property I have is at Racine. When leaving Racine I told Richmond to care for the property, don't know as I said anything about writing. I have never written to him or any one else about the property and
221 have received no letter from him about it. I think I said yesterday in the presence of Mr. Fish and Mr. Blake, that R. W. Howland told me last summer that he learned from Elliott, while he was at work for Blake & Elliott, that they were going back on their agreement and that was the reason he left their service; but I am not sure that Richmond stated it. (f. 503-515.)

ARGUMENT.

Before considering the foregoing evidence, we ask
222 the attention of the court to some rules of law, applicable to the undisputed facts of the case. It is clear from the record evidence that Taylor took the sheriff's deed in full satisfaction of a pre-existing debt, which was evidenced by the bond and secured by the mortgage. The bond was surrendered and cancelled, and the mortgage extinguished by the foreclosure. It is obvious that the title thus acquired at the sheriff's sale cannot take effect as a mortgage, because the object which the par-
223 ties had in view, as appears of record required, that the estate should vest absolutely in the grantee:

Poindexter vs. McCannon, 1 Devereaux Eq., 373.

McKinstry vs. Conly, 12 Alabama, 678.

Slee vs. The Manhattan Co., 1 Paige, 48.
Holmes vs. Grant, 8 id. 243.
Conway vs. Alexander, 7 Cranch, 237.
Sloway vs. McMurray, 27 Missouri, 113, 116.
Hoopes vs. Baily, 28 Mississippi, 328. 224
Mason vs. Moody, 26 id. 184.
Carter vs. Williams, 23 La. An., 281.
Pitts vs. Cable, 42 Illinois, 105, 106.

When, therefore, land is conveyed unconditionally, in consideration of an amount due by the grantor, the burden is on him to rebut the resumption arising from the terms of the deed, that it was given in payment, and not by way of security or mortgage:

Hogarty vs. Lynch, 6 Bosworth, 138.
Ford vs. Irwin, 18 California 117, 14 id. 428. 225

The presumption of an absolute conveyance, is much stronger where the title of the grantor is conveyed by a court of equity by means of the ordinary judicial proceedings, than it is where the grantor and grantee meet and negotiate for such absolute conveyance by deed, *inter partes*, and to convert such a deed into a mortgage, the proofs must be no less convincing, than are required to authorize the reformation of a written contract, on the ground of mistake. If the proofs are doubtful and unsatisfac- 226
tory, and the mistake is not made entirely plain, equity will withold relief, upon the ground that the written paper ought to be treated as a full and correct expression of the intent, until the contrary is established beyond reasonable controversy.

The late Chief Justice of Wisconsin in an able opinion, so clearly states the rules that govern a court of equity in this class of cases, that we make particular reference to the opinion. See

Kent vs. Lasley and others, 24 Wis. 654.

227 Says *Dixon, Ch. J.:* "The rules and practice of that court were such as to afford many safeguards to the rights of the grantee, and to obviate many evils which must otherwise have grown up out of the doctrine.

"The grantee was made a party defendant to the bill, and his answer thereto, under oath, had all the weight of the testimony of a single disinterested witness in the case, and even more. The denials of the answer upon the knowledge of the grantee, must
228 have been overborne by the testimony of one witness, with strong corroborating circumstances, or two positive witnesses; or they must have been so manifestly at variance with the facts and circumstances disclosed by the pleadings and evidence, as to leave no doubt in the mind of the Court. And the witnesses were not only required to be disinterested and credible, but their opportunities of knowing the facts about which they deposed, must have been ample. Where the subscribing witnesses to the
229 deed were alive, and their testimony could be obtained, that was preferred; and the absence of such testimony was considered as affording a fair presumption that, if produced, it would militate against him whose case it would sustain or destroy. The failure to examine the subscribing witnesses, or to satisfac-

torily account for their not being examined, cast a shade of suspicion over the cause of the complainant, and induced the court to regard with more jealously, and examine with stricter scrutiny the less convincing proof on which he relied. Not only the best ev- 230
idence was required, but it must have been clear and convincing. Such was the practice, and such the rules of evidence, which prevailed in courts of equity in causes of this nature.

Bryan vs. Cowart, 21 Ala., 92.
Cook vs. Gudger, 2 Jones Eq., 172.

The same and no less convincing proofs were required, than are necessary to authorize the reformation of a written contract on the ground of mistake. If the proofs are doubtful and unsatisfactory, and the 231
mistake is not made entirely plain, equity will withold relief, upon the ground that the written paper ought to be treated as a full and correct expression of the intent, until the contrary is established beyond reasonable controversy.

1 Story's Eq. Jur. § 152.
Newton vs. Holley, 6 Wis. 592.
Lake vs. Meachem, 13 *id.* 355.
Fowler vs. Adams, id. 458.
Harrison vs. The Juneau Bank, 17 *id.* 340. 232

I very much question whether, in any case, after the death of the grantee, the unaided testimony of the grantor alone, however intelligent and credible he may be as a witness, should be held sufficient to set aside the deed, or invalidate the title claimed

under it. It would certainly be a most dangerous precedent to establish."

In *Harter vs. Christoph and another*, 32 *Wis.*, 246, Justice Lyon, in discussing the same question, makes
233 use of the following language: "Unless the evidence clearly and satisfactorily proves the alleged mistake, or, in the language of many of the cases, unless it proves the same beyond a reasonable doubt, the defense fails, and the mortgage must be enforced according to its terms. It would be an extreme case which would justify the Court in reforming or defeating a written instrument for a mistake therein, upon the uncorborated testimony of a party to it, although such testimony were uncontradicted."

234 In *McClellen vs. Sandford, impleaded, etc.*, 26 *Wis.* 607, Justice Dixon referred to Kent *vs.* Lasley supra in the following language: "In a recent case, *Kent vs. Lasley*, 24 *Wis.* 654, this Court had occasion to express a doubt whether a deed absolute on its face could be turned into a mortgage by the unaided testimony of the grantor, however intelligent and credible he might be as a witness. We thought it would be a most dangerous precedent to establish."

Cushman vs. Stone, 69 *Ill.*, 516.

235 ~~*Shubert vs. Stanley*, 59 *Ind.*, 40.~~

Gibbs vs. Pinney, 43 *Texas*, 560.

Viewing the evidence in the light of the principles stated, let us inquire:

1st. Is the alleged contract between complainant and Isaac Taylor established by sufficient and competent testimony?

2d, Is the alleged contract between complainant and Taylor and the defendants in like manner proved and established?

I

To establish these agreements, the complainant is 236
compelled to rely substantially upon the testimony of a single witness, his brother Richmond W. Howland; and in this connection, as preliminary to a discussion of the two questions of fact named, it seems appropriate to consider for a moment some of the extraordinary features of this case, and to call particular attention to Richmond W. Howland's connection with it.

The testimony of this witness shows that in 1849 he began business with one Barry, and failed for a 237
large amount in 1850, his father, Oziah Howland taking the assets of the firm, but in the name of Phineas Hardy; and a large amount of the liabilities of the firm remaining to this day unpaid. Upon the failure of that firm, the business was resumed in the name of Hardy, and continued for a few months, when it passed under the nominal control of Oziah Howland, who shortly became associated with one White in the same business. This firm was followed by that of Howland & Adams, which failed in Janu- 238
ary, 1858. The managing man in these successive firms, and whose active connection with and control over the business in all it changes, as is apparent from the testimony, was Richmond W. Howland; his father Oziah Howland and Hardy being both residents of the state of New York. In 1851, the premises in question, with other lots, all in an unim-

proved condition, were purchased and the title taken by Jenks, who is a witness for complainant, and who
239 testifies that he and Oziah Howland advanced upon the purchase price, $500, and that a mortgage was given for the balance, $2.500. Jenks afterwards conveyed the undivided one-half to White, before named, he having previously conveyed the other half to Eugene Howland, the complainant, which conveyance was made simultaneously with the original purchase. Subsequent to the acquisition of the title to one-half of the property by White, he (White) conveyed to complainant, who testifies that he had no knowledge
240 at the time of the purchase of the premises, and of these several conveyances. The testimony of Jenks and R. W. Howland shows that in all these transactions in connection with the purchase of this property, and in all negotiations relating thereto, Richmond W. Howland was the active managing man. The complainant himself testifies that he furnished no money either for the original purchase or for the construction of the building upon lot twelve (12), except about $1,750, and $600
241 which was borrowed from Phineas Hardy and was never paid, to the knowledge of complainant.

The construction of the building was commenced in July, 1857, and completed in 1859. Here again, in all the work of erecting this building, Richmond W. Howland was the managing man, incurring obligations, assuming liabilities, and performing services which are only consistent with existence of an actual pecuniary interest in the property. As we have

said, the erection of the building was begun in July, 1857; in January, 1858, the firm of Howland & Adams failed, and made an assignment to B. F. Pierce. That firm left a large indebtedness unpaid, and a large amount of which still remains unpaid; and, as complainant testifies, Richmond W. Howland 242
bought from the assignee, Pierce, the stock and assets of the firm, in the name of complainant, giving the complaint's notes for about $4,000; the proceeds of which stock went into this building, the complainant testifying that he does not know that the notes for $4,000 were ever paid, and that he never furnished any money to pay them.

We submit upon the foregoing state of facts, that Richmond W. Howland, the only witness for complainant, who testifies to the making of the contracts 243
in question, is not such a disinterested person, in connection with this property, as under the decisions is required to furnish the convincing and satisfactory testimony, upon which this court can decree that the conveyance held by defendants must be overturned and their title destroyed; especially in view of the further fact, that the grantor in that conveyance, and the party to the alleged agreements is dead, and unable to speak upon the transaction in controversy.

At the time of the alleged oral agreement between 244
complainant and Taylor, it is conceded that Taylor held the bond of complainant for $7,000, secured by mortgage on the premises in which bond there was the following provision. "The said Eugene Howland may extend the time of payment of two-thirds

of amount of said principal sum, one-third to the 1st day of Jan., 1861, and the other third to the 1st day of Jan., 1862, all upon interest at the rate of twelve per cent. per annum, payable semi-anually, upon his
245 giving said Taylor, previous to the first day of November, 1859, notice in writing of his intention thus to extend, and in case there shall be such an extension, all the terms and conditions of this bond shall be applicable to the extended loan."

Is it credible that a man of the careful, painstaking business habits of Isaac Taylor, for such a man he is shown by the testimony to have been, would after thus providing in the most specific manner in the bond itself for a limited extension of the time of pay-
246 ment, grant by oral agreement an unlimited extension, and intend to continue it in force even through all the legal proceedings which he prosecuted for the foreclosure of his mortgage, and which culminated in his acquisition of the absolute title? Moreover the conduct of R. W. Howland is inconsistent with his claim that he had an arrangement with Isaac Taylor, whereby Taylor was to prosecute the foreclosure and bid in the premises at the sale, and hold them by way of mortgage with an unlimited privilege in complain-
247 ant to redeem. For if this be so, why does Howland, the witness, endeavor before the sale, to induce Horatio T. Taylor and the defendant Blake to advance the money and purchase the property for the ultimate benefit of complainant? If such an absolute agreement as is claimed, existed between Isaac Taylor and complainant, why does R. W. Howland

try to arrange with H. T. Taylor that while he and Blake are carrying the property, he, H. T. Taylor, shall receive $200 per year for services in taking care of the property, when he was getting from Isaac 248
Taylor the most extraordinary services in making the property available, without paying any compensation at all? And why does he remain silent concerning the whole arrangement with both defendant Taylor and defendants for a period of over ten years, and allow his brother, the complainant, to become estranged from him, because of supposed mismanagement of the property, and because of his brother's supposed loss of the $1,750 he invested in the building, if any such agreement preserving the rights and 249
interests of his brother was all the time in full force?

Further, why does he, from April, 1863, until the filing of the bill, remain silent toward these defendants concerning the rents received by them from this property, and the moneys expended by them for taxes, insurance and repairs, and concerning the interest of complainant in the property? For he testifies that he never spoke a work to Elliott upon the subject of defendants' purchase, never, to use his own language, "recognized him in the transaction," 250
although he testifies he was employed by defendants and worked for their firm for six years of the ten mentioned, and had long been familiarly acquainted with Elliott. His conduct is only consistent with the theory that he knew that complainant's interest in the property was forever gone, and that if any agreement, of the nature of that claimed, ever existed

between complainant and Isaac Taylor, it was extinguished by the foreclosure, and by the sale and con-
251 veyance of the property subsequently made to Taylor.

Is it reasonable to suppose, after R. W. Howland's experience with the defendant, Blake, in regard to the brick yard property, which was bought by Blake in trust for Howland and was sold for his benefit, and the proceeds honestly accounted for by Blake and paid over to the use of R. W. Howland, that he would, with such an agreement as he claims in full force, and without applying to defendants for an ac-
252 counting, consult counsel, then proceed to New York, and get consent of his brother to begin suit, and, thereupon, without demand for a re-conveyance of the property, and for an accounting, and, without any previous notice, file this bill?

All these circumstances in the conduct of Richmond W. Howland, tend powerfully to show that the alleged agreement had no existence in fact, but that the witness, Howland, has brought them forth in this litigation as creations of his own mind, based upon con-
253 versations with Isaac Taylor, concerning an extension of time for payment of the mortgage, and concerning the frequently expressed wish of Mr. Taylor previous to the sale, that the complainant would pay the mortgage and save the property, or that he would persuade some person to bid in the property for him at the sale; and further based upon unperfected negotiations with Horatio T. Taylor and the defendant Blake, before the foreclosure sale, about carrying

the property under the circumstances detailed by Taylor and Blake in their testimony. 254

Let us now see what was the conduct of Isaac Taylor in this business, so far as it is developed in the proofs.

He is shown by the testimony of Henry S. Durand, Albert G. Knight and Henry T. Fuller, to have been, in the language of Mr. Durand, "a sharp, thorough, careful, exacting, cautious, and a very honorable and honest business man." Mr. Knight says in his testimony, "He was remarkably particular in making any bargain or agreement, very careful not to have anything unexplained—one of the most particular men in making a bargain I ever knew. I found it difficult to draw an agreement for him that was sufficiently precise to please him. All his business transactions that I knew anything about were reduced to writing." Mr. Fuller, his attorney and confidential adviser, says, "In all matters of time his general habit was to reduce business transactions to writing. In matters to be accomplished immediately, that is, within a few days, he would often require a memorandum in writing. I never knew him to make a verbal contract concerning real estate, where it involved time, except in some leases for a short time." 255 256

Now it appears from the testimony that without consulting the complainant or Richmond W. Howland or any person except his attorney, he began a suit to foreclose his mortgage on the property. The record in the case and the testimony of Fuller and

257 Durham show, that the suit was intended, begun and prosecuted for the sole purpose of enforcing a speedy payment of his debt. Fuller testifies that he was urgent and wanted prompt and decisive proceedings taken. Such proceedings were taken. All parties in interest were made defendants. Publication of summons was made for non-resident parties, including the complainant in this case. Nevertheless, and in the face of this record and of these facts, in the face of the public sale under the foreclosure
258 decree and the adjudication of the court, confirming that sale, it is now claimed by Richmond W. Howthat there was a secret intent on the part of Taylor, all this time in existence, whereby he was thus to foreclose his mortgage, incur the necessary expenses for that purpose, and go through all the forms of the most effective judicial proceedings and have at the end what he had in the beginning, a mortgage still and nothing but a mortgage. The testimony of Richmond W. Howland that an arrangement was
259 made to this end in connection with the foreclosure, shows that it was not made until after the proceedings were commenced and that Taylor *then* stated to him that he only commenced proceedings to perfect his title, and that it was not intended to affect the interests of Eugene Howland in the premises. Is all this credible in view of the business character of Mr. Taylor and of the circumstances of that foreclosure? Is it at all credible in view of the fact that neither at the time when the mortgage was placed
260 in the hands of Fuller & Durham for foreclosure,

nor at any subsequent step in the proceedings, did he inform either of those attorneys or intimate to them that the foreclosure was for any other purpose except to enforce payment of his debt by foreclosing his mortgage in the ordinary manner, without condition or reservation. His mortgage was the first lien upon the property. His title needed no legal proceedings to perfect it. It was absolute and good against all the world except Daniel P. Rhodes. But Richmond W. Howland, the moving party in this 261
cause, would have us believe that this honorable, honest man, Isaac Taylor, conceived the idea of foreclosing his mortgage for the purpose of fraudulently cutting off creditors of both complainant and Richmond W. Howland from all possible future claims by judgment or otherwise upon the property. If any such agreement or understanding as Richmond W. Howland now claims, existed either at the time of beginning the foreclosure or pending its prosecution, who can believe that Mr. Taylor would main- 262
tain towards his confidential attorneys who were acting for him in the proceedings, absolute silence regarding it? To them he would undoubtedly have communicated it. With them, in the exercise of his caution and great care, he would have discussed the legal effect of it, and learned whether it in any manner affected his rights. To say nothing of his own good sense and judgment on the subject, he would have sought advice from them as to the necessity or advisability of foreclosing a mortgage and accomplish- 263

ing nothing except a continuance of his relation of mortgagee.

In his cross-examination, the witness Howland is forced to the extremity of claiming in effect, that the foreclosure of the Taylor mortgage was to perfect title by cutting off the claims of parties who might get judgments which would be liens upon the property and so perpetrating a fraud upon creditors. Now if, as the courts hold, a conveyance absolute on
264 its face, cannot be turned into a mortgage upon the testimony of the grantor alone, with what conclusive force may the rule be applied forbidding a party by his unsupported testimony to maintain that a legal proceeding in which he was interested, was prosecuted with intent to defraud creditors, thus making himself a party to the fraud and implicating in the fraudulent transaction, the person who put in progress the proceeding, now dead and unable to speak concerning it.

265 On the 18th day of April, 1863, Taylor conveyed the premises to defendants.. He *conveyed by a warranty deed containing full covenants.* He told the defendants the title was good and furnished an abstract of title.

See testimony of Charles L. Bunce and James T. Elliott.

If he had made the agreement now claimed, would he have armed the defendants with his covenants of warranty as weapons with which defendants and
266 their grantees could have come back upon him in

case of failure of title or breach of covenant? It is against reason to suppose it. From his character as delineated in the testimony you must conclude that in conveying to defendants, if this agreement was in 267
force, he would have reserved the equitable rights, interest and title of the complainant. He was not the man to convey another's property by absolute deed with covenants, when he knew he had only a mortgage upon it For such covenants, he would know, were far-reaching in their consequences if broken. His lawyer, too, drew the deed. Subscribing witnesses saw it executed, neither of whom are called by complainant. There is no communication to the attorney by Taylor, that the conveyance is 268
not what it purports to be, an absolute deed in fee. All these are controlling circumstances upon the question of the grantor's intention and understanding.

On the 7th of July, 1862, Mr. Taylor also by warranty deed sold and conveyed to Charles Clement an interest in an alley near the building and an undivided half of the south wall of the building, to the heighth of three stories.

See deed from Taylor to Clement. (f. 517, p. 217.) 269

The consideration expressed in this deed is $1,000, and there is no other proof of the amount paid by Clement. So upon this evidence we find that Taylor made an absolute sale of a portion of one of the walls of this building, covenanted that he had a good and indefeasable title, and received $1,000 on the sale. We need only ask, is this consistent with the

claim that he was then a party to the agreement with complainant, which is made the foundation for this
270 bill?

At the sale under the foreclosure, June 19th, 1862, Taylor bid for the property $9,300.

He sold and conveyed the premises to defendants, April 18th, 1863, for $10,000, and had also received and appropriated the rents from the time the judgment was entered, February 26th, 1862, to the date of his conveyance to defendants, amounting to about $1,700, so instead of selling the property for just the amount due him upon the mortgage and judgment,
271 he sold at an advance of about $1,500, to say nothing of the sale to Clement, which is a circumstance showing with much clearness that he was dealing with the property as his own, and that in fact there were no reservations in favor of complainant.

For the evident purpose of making his title complete and himself entirely secure, he acquired the titles founded on the tax deeds which are in evidence, and took also from Daniel P. Rhodes the title obtained upon the sale in the case of Wiltsie & Het-
272 trick against Howland, all of which are hardly reconcilable with the theory that he was seeking only to keep in forec his mortgage for the ultimate benefit of complainant. We submit that no man of the business shrewdness of Mr. Taylor, would show such industry and care in acquiring absolute titles to property in himself, when his sole purpose *was to perpetuate and keep alive the interests of his mortgagor.*

Mr Fuller testifies that Mr Taylor urged him to

prosecute the foreclosure *for the purpose of protecting his interests.* That Taylor became anxious be- 273
cause the Wiltsie & Hettrick claim was prior to his mortgage, and that he regarded the property as *inadequate security for the liens upon it.* This state of the case is utterly irreconcilable with the claim now put forward by the complainant, that the steps taken by Mr. Taylor to collect his debt, were only intended to continue the debt with property as security, which he then deemed insufficient. Taylor's whole course of conduct in the particulars referred to shows the most vigorous action as a mortgagee fear- 274
ful of his security to realize the amount due him. Previous to his sale to defendants he offered to sell the property to Burch & Bruce and advised them to buy it, and there is no proof that in his offer to sell to them, he disclosed any contingent or other interest in the property in complainant.

The testimony of Thos. J. Emerson shows the exertions and activity of Mr. Taylor in endeavoring to realize his debt. Emerson says at one time Taylor thought he would lose money on the investment, and that after the sale to defendants he spoke exult- 275
ingly of his success in accomplishing the sale and making his money. That Mr. Taylor had good reason to believe, at the time referred to by Emerson, and when the foreclosure action was commenced, that his security was precarious is, we think, clearly demonstrated by the testimony which will be hereafter more fully commented upon, showing the market value of this property in 1860, 1861 and 1862, the

depressed condition of the real estate market in Ra-
276 cine, and the inability of owners of business property in the immediate vicinity of these premises, to realize on sale in many cases more than a small percentage of its cost, or procure tenants at more than nominal rates of rent.

Both of the defendants, Blake and Elliott, testify that Taylor, in negotiating and making sale to them, gave no information or intimation that he was carrying the property for the benefit of complainant, or that he was not the absolute owner. The witness
277 Charles L. Bunce, heard a conversation between these parties on the subject. He testifies that Taylot told Elliott the title to the property was good, and that he figured up the annual rents of the building with Blake, and said to Blake, "You see it is a good investment, setting aside the rise in the value of the property."

James H. Kelley, in his testimony, states that he was the confidential friend and agent of Taylor; had charge of his papers, transacted his business in his
278 absence, and was the executor of his will. He testifies that in the examination of Mr. Taylor's papers he had never seen any paper or memorandum whatever, showing any agreement or understanding concerning the Howland property, or showing or indicating that his title thereto was not absolute.

To sustain his claim that the agreement testified to by R. W. Howland, was made with Taylor, complainant puts in evidence the contents of a book of account kept by Taylor in his lifetime, and which is

produced by Mr. Kelley. This book discloses a 279
debit and credit account kept by Taylor with the Howland block from Jan. 1st, 1863, to the time of sale. This account shows what the property had cost him, with accumulated interest and profits, to April 1st, 1863, and what he realized from it in the sale to defendants, and from rents, after Jan. 1st, 1863. It may be argued that this corroborates the testimony of R. W. Howland, as to the agreement, because, as it will be said, if there had been no such agreement, he would have kept no such account. But it appears 280
from the same book, and from the testimony of Kelley, that it was Taylor's habit to keep such a debit and credit account with all his property, real and personal, except his farm and homestead, his evident purpose being always to have the means of knowing the exact profits he had realized and losses he had sustained on every investment he made. The account with the Howland block is evidently made up by showing what he realized from the property on the sale to Blake and Elliott, and the quarter's rent 281
received after Jan. 1st, 1863, making $10,291.87, and then charging the property with interest and profit on investment from Jan. 1st, to April 1st, 1863, and $635.25 to balance the account. A glance at the amount paid for the property, at June 19th, 1862, and the amount he invoiced the property at Jan. 1st, 1863, shows that he added interest to his purchase, and deducted nothing for rents, and this would also appear to be true from the time the foreclosure judgment was entered, February 26, 1862 to June 19, 1862, the day of the foreclosure sale.

282 On pages 64 and 65 of this book of account, is an account Dr. and Cr. with the vessel "D. Slauson," showing her value and what he received for her.

On pages 66 and 67 is a similar account with schooner "Norway."

On pages 84 and 85 is Dr. and Cr. account with Geo. Steele and Isaac Taylor, firm of Steele & Taylor, Chicago Elevator, the Dr. side showing the different amounts of money he paid out on account of and for that elevator.

283 On pages 86 and 87 is an account with the Two Rivers Pier which he owned, the debit side showing the money invested, and the credit side showing what he got for it, and the rents received on account of it.

On pages 108 and 109 is an account with Muskegon Mill, the debit side showing what the mill cost him, and the credit side showing what he got for it.

On pages 190 and 191 is an account with Main street Lot, Racine, which he bid off at mortgage foreclosure, the debit side showing his original in-
284 vestment, and taxes paid by him, and the credit side showing what it sold for.

It thus appears that the account kept by Mr. Taylor with the Howland block differs in no respect from the accounts kept by him with all of his real estate investments.

In the same book is a list of the notes given by defendants upon the purchase by them of the Howland block, and this is a circumstance to which the complainant's counsel appeared to attach weight,
285 when he put the book in evidence. But it appears

that these notes are but a part of an inventory of Mr. Taylor's entire property, real and personal, which he had made and recorded in this book in the early part of 1863.

The additional testimony offered by complainant to establish the contract with Taylor sworn to by Richmond W. Howland, is that of M. R. Teegarden, Wm. H. Jenks and Horatio T. Taylor, who severally testify to conversations with Isaac Taylor, in which he is said to have made use of language which it is 286
claimed tends to establish such a contract.

These several conversations detailed by the witnesses over eleven years after they took place are irreconcilable with Taylor's conduct at the time, his declaration to Elliott in the presence of Bruce, and his solemn declarations in the warranty deeds to Clement and the defendants in which he covenants that he is owner in fee of the premises conveyed.

These witnesses Teegarden, Jenks and H. T. Taylor, in repeating the statements of Isaac Taylor are 287
compelled to rely upon uncertain recollection both as to dates and the language used by Mr. Taylor. In view of Taylor's acts and conduct of which we have before spoken we do not doubt, that if he made statements to these witnesses upon the subject of this property and his relation to it, he intended only to communicate to them his hope, that Howland would yet pay him the amount of his investment which was what he desired, and not the property, and in that case he would willingly re-convey, and that 288
he did not mean or intend to say that there was in

existence a contract making it obligatory on him to do so. If these conversations took place before the foreclosure sale, they are perfectly consistent with Taylor's title as a mortgagee in possession, and if made after the sale, they must have been allusions by Taylor to that relation. A careful inspection of the entire testimony of H. T. Taylor will show this to have been the case.

289 To illustrate the uncertainty of testimony of this character take that given by the witness Jenks. He says the conversation with Mr. Taylor was had in the front room of his office, that there was a partition across the room with an opening in it through which he saw another person in the adjoining room writing at a desk, and the witness says this conversation was held in July, 1862. George W. Slauson, who has been familiar with the office, and occupied it most of the time since it was built, testifies that
290 there was no aperture in the partition in 1862 and that it was made in 1866, which was after Mr. Taylor's death. This is only important as showing the great danger of relying upon the statements of a witness when he undertakes to repeat conversations and give circumstances which transpired at a time so long anterior.

All courts agree that it is hazardous to rely upon such testimony, and we adopt here the language of the chancellor in *Padgett vs. Lawrence, 10 Paige, 181,*
291 that "It is always unsafe to rely on the uncertain recollection of a witness as to the existence of a con-

tract or agreement *which is to impair the title to real estate.*"

Especially should this testimony of the statements of Taylor, tending to impair his title to this property, be received with caution and allowance here, because Taylor is dead, and cannot now be heard to explain or contradict them.

In *Dreher vs. The Town of Fitchburg, 22 Wis., 675-680*, it was held not to have been error for the court 292
to instruct the jury that the admissions of a party were "the weakest kind of evidence that could be produced."

In *Law vs. Merrills, 6 Wend, 277*, Chancellor Walworth says: "Evidence to establish a fact by the confessions of the party should always be scrutinized and received with caution as it is the most dangerous evidence that can be admitted in a court of justice, and the most liable to abuse; although a witness is perfectly honest, it is impossible in most cases for him 293
to give the exact words, in which an admission was made and sometimes even the transposition of the words of a party may give a meaning entirely different from that which was intended to be conveyed to the witness."

Mr. Greenleaf in his work on evidence, vol. 1, sec. 200, says: "It (this class of evidence) should be received with great caution," and that "it is subject to much imperfection and mistake;" and Judge Redfield likewise, in his edition of the same work, "We 294
must conclude there is no substantial reliance upon this class of testimony."

The action and conduct of the complainant with reference to this property, are of equal importance with that of Isaac Taylor in settling the question of the alleged contract between them, and upon this branch of the case the testimony of G. Q. Erskine is material.

He says he was well acquainted with Eugene
295 Howland before he went to California in 1860; that he talked with him in regard to his property at Racine, and that complainant told him that he had sent money from California at different times, and Richmond had used it in the building, *and that he regarded it as all lost.* That he talked with witness frequently about it, and that he said he had got to start in life anew.

Eugene Howland the complainant whose testimony was taken on the part of the defendants, says
296 he started for California in July, 1860; that he never was at Racine afterwards, that he received by mail a copy of the papers in the foreclosure suit begun by Isaac Taylor, that he never by letter or otherwise after receiving these papers, inquired about the property and *first learned in June,* 1873, that Blake & Elliott had taken title to the property conditionally; learned it from Richmond W. Howland, who said that the rents had amounted to $10,000 more than the indebtedness. Complainant testifies further that
297 he lived from 1864 to the present time in the neighborhood with his father Oziah Howland, his brother Jerome, named by Richmond W. in his testimony, and Phineas Hardy; that he had never paid Hardy

the $600 he borrowed of him in 1858 and which was used in the building, that he never paid the $3,000 mortgage to Hardy, which Richmond W. testifies was paid by complainant before the surrender to Taylor, and never heard that Hardy had received his pay.

So in brief, it may be stated, that complainant, 298
although notified of the pendency of the foreclosure, let it go by default, made not even an inquiry about it or the property, considered the property abandoned to creditors and lost, and *never knew or heard of any agreement or arrangement between himself, and either Taylor or the defendants whereby his interest in the property was contingently or in any manner preserved, until June, 1873*, then gave his consent to this suit upon the flattering prospect held out to him by his brother that the property had paid for itself and 299
that defendants were indebted to him in the sum of $10,000.

This is complainant's position in this case, and the inquiry is pertinent, if the agreement with Taylor actually existed as claimed, and he had an agent appointed by formal power of attorney residing at Racine, and fully cognizant of all facts, would not the complainant, from some source, have obtained knowledge of such agreement prior to the time when it appears to have been communicated to him for the purpose of 300
getting his consent to the filing of this bill. The conduct of Richmond W. Howland on the day before the sale, in endeavoring to make an arrangement with H. T. Taylor and Blake to purchase the

property for him, is entirely inconsistent with his evidence, that he had such an agreement with Isaac Taylor, made shortly after the foreclosure action was commenced.

OF THE ALLEGED AGREEMENT WITH DEFENDANTS.

301 Here submitting to the court the question as to the alleged agreement between complainant and Isaac Taylor upon the points thus far presented, now we come to the question, was there ever any such agreement as claimed, made between complainant, Taylor and defendants?

As corroborative of his theory that such an agreement was made, complainant offers evidence to show that an arrangement was first contemplated between the parties and Horatio T. Taylor, whereby the pro-
302 perty should be carried by Blake and H. T. Taylor until the rents and profits should pay the amounts advanced by them in so carrying the same. It is pertinent, therefore, to inquire at this point, what was the precise arrangement so contemplated, and when did it occur? As to the terms of that arrangement there is no material discrepancy between the testimony of H. T. Taylor and the defendant Blake. According to the testimony the proposed arrangement was, that Blake and
303 Taylor should purchase and take the title of the property in their own names, pay a part of the purchase money, and give their notes to Isaac Taylor for the balance. H. T. Taylor was to take charge

of the property and receive $200 per annum for that service; the parties were to hold the property six years, at which time they were to re-convey, receiving payment of the amount of their advances over and above rents realized from the property, with ten per cent. interest. It is not quite clear what rate of interest they were to pay Isaac Taylor on their 304
notes to him, but the testimony indicates that it was to be seven per cent. It is quite clear from all the evidence that Richmond W. Howland was to be the beneficiary of this contemplated arrangement. He was the active party in endeavoring to consummate it. Blake testifies that he was the person for whose benefit the arrangement was proposed. No other Howland was mentioned throughout the negotiations. H. T Taylor, being pressed upon this point testified:

"*Q.*—In the talk about this arrangement and 305
about the re-conveyance of the property, was any other Howland mentioned than Richmond W.?

"*A.*—I don't think that the name of any Howland, either Eugene or Richmond W., was mentioned to my recollection. I might have inferred—

"*Q.*—Do you now remember that Mr. Howland, in conversation with you and the other parties talked in any other manner than of himself and his interests in the property?

"*A.*—I can answer it in this way, that an outside 306
party, not knowing anything about the circumstances, would think in his conversation that he meant Richmond W.

Mr. Blake testifies;

"*Q.*—What was the negotiation between Taylor, Howland, and yourself at that time?

"*A.*—I think that we were to advance $2,000, that is, $1,000 each. We were to take the title at the foreclosure sale, and H. T. Taylor was to take
307 charge and look after the property. The understanding was that we were to take the property, hold it and collect the rents a certain number of years, I think it was five, it might have been six, and give Mr. Howland that time to redeem it—Mr. R. W. Howland.

"*Q.*—Was there any talk or conversation that the arrangement was made for the benefit of Eugene Howland?

"*A.*—No sir. I did not know Eugene Howland
308 in the transaction at all.

* * * * * * * *

"*Q.*—Did any person ever request you to purchase this property at the foreclosure sale, with H. T. Taylor or any other person, and hold it for the benefit of Eugene Howland?

"*A.*—They do not.

"*Q.*—At the time of the conversation between Mrs. Howland and yourself, and between H. T. Taylor, R. W. Howland and yourself, for whose benefit was the contemplated purchase to be made?

309 "*A.*—For the benefit of R. W. Howland; that was the understanding."

This testimony clearly shows that the transaction above referred to was a contemplated purchase by Blake and Horatio T. Taylor, in trust from *Rich-*

mond W. Howland, and is not even corroborative of the complainant's claim, that defendants' purchase was for the complainant's benefit.

It also appears from the following testimony that the negotiations took place prior to the foreclosure sale. 310

H. T. Taylor is uncertain at what time they occurred, and states that it may have been before or after the sale on the foreclosure. In fixing the time when these negotiations did take place, the strongest terms used by the witness Taylor, and his best recollection on the subject are matters of *impression* only. He also says positively that some of the talk was had *before* the foreclosure sale—and it was his recollection that the conversation took place in the court room at Racine, while the circuit court was 311 in session, but cannot say whether it was at the term at which the judgment of foreclosure was entered, or the subsequent term at which the sale upon that judgment was confirmed.

Richmond W. Howland does not fix the time of these negotiations, as subsequent to that sale; he says the contemplated arrangement with Horatio T. Taylor was made *at the time of the sale*, that most of the talk respecting it was had on the day of the foreclosure sale, *and the day before*; that he asked Isaac 312 Taylor for an adjournment of the sale for a few days, but that Taylor said it would make no difference.

This testimony to which we have adverted is certainly not sufficiently definite to justify the conclusion

that those negotiations were had subsequent to the foreclosure sale.

The testimony of the defendant, Blake, upon this point is positive. It is as follows:

"*Q.*—After the sale on the foreclosure, in June,
313 1862, did you have any talk with H. T. Taylor and R. W. Howland or either of them, about taking the property and carrying it, for the benefit of Howland?

"*A.*—I never did."

Blake further says that under this arrangement he and H. T. Taylor were to take the title at the foreclosure sale; and we submit that the testimony of H. T. Taylor and R. W. Howland is corroborative upon this point.

If it be true that these negotiations were had
314 before the foreclosure sale, it simply shows that R. W. Howland with Isaac Taylor's aid, was endeavoring to get some one to bid in the property at that sale, and give the former an opportunity to re-purchase the property, and it will be remembered that H. T. Taylor testifies that after the sale, Isaac Taylor told him that he had all the time hoped that Howland would be able to procure some person who would take the property at the sale.

To establish the contract with Blake, Richmond
315 W. Howland testifies, that a day or two before defendants took the title to the property, he had a conversation with Blake, under the shed back of defendants' shop, when they were alone. This is unqualifiedly denied by the defendant Blake—and it is a noticeable fact bearing upon the probability of its oc-

currence, that the defendant Elliott, a joint party in interest and co-purchaser of the property with Blake —was not present, was not consulted, was never spoken to about it by Howland or by Blake, and never heard of it. 316

We call the attention of the court to a due consideration of the attendant circumstances surrounding this theory and claim of the complainant. The interests involved were of magnitude, and the parties were experienced business men. And yet, no memorandum or writing was ever made of the transaction, or any part of it. This is especially remarkable as it is claimed to have been made wholly for the benefit of Eugene Howland, who was a stranger in business relations to Blake, and a man who had no acquaint- 317
ance whatever with Elliott, and in whom neither of the defendants could be supposed to have any interest. According to the complainant's version, the defendants were to loan him ten thousand dollars, taking no agreement, evidence of debt, or promise of repayment; no provision was made for contingencies of unproductiveness or destruction of the property; although the defendants were to advance all that the entire property and title, in the light of all the testimony, can be regarded as reasonably worth; 318
it was a transaction from which the defendants could realize no profit, the $200 talked of for care of the building, etc., being no more than the annual value of an agent's services for that purpose. No one was present save Blake and R. W. Howland, when this alleged voluntary and, to defendants, unprofitable

arrangement was made, and the only motive Howland assigns for the defendants' entering into it, was their friendship for himself and his family! And yet
319 he was to receive no benefit from it, but the entire advantage was to accrue to the complainant, between whom and Richmond W. Howland there was such an estrangement that they had no correspondence or communication with each other after July, 1860, *until* June, 1875. Moreover, it must have been contemplated, at the time of the alleged negotiations between Richmond W. Howland and Blake, that Blake, in carrying out the arrangement, would be obliged to borrow money for the purpose, as the testimony
320 shows that at this time Blake & Elliott were borrowing to carry on their business. And in the purchase of this property the defendants did actually borrow $2,500 at the bank, with which to make the first payment to Isaac Taylor, and gave their several promissory notes for the balance of the purchase price. Now, is it reasonable or probable, in view of the circumstances before recapitulated, that Blake should contract to make such a loan, and take, as the only security, property worth no more than the amount
321 loaned, at a time of continued depression in values and thus involve himself and his firm in liabilities, without any commensurate profit or resulting advantage, upon inadequate security, all for the benefit of Eugene Howland, who was practically a stranger as we have already seen, and with no other motive than friendship for the family of complainant's business agent?

The complainant produces certain witnesses to show admissions by the defendants to the effect that they had purchased the property subject to complain- 322
ant's alleged rights and interests therein. Admitting that these witnesses had the conversations with Blake & Elliott which they attempt to detail, they do not prove a recognition by defendants of any agreement between them and complainant; for all these witnesses agreed, that in the talk they had with defendants, Richmond W., and not Eugene Howland, was the only party named.

The witness Dickey fixes the time when Blake made certain admissions to him, as in the spring of 323
1863, and with reference to the construction of a certain building erected by Osborn & Osgood on Sixth street in Racine; says that in the conversation, he and Blake talked about brick, and that the conversation commenced about Blake loaning Osborn & Osgood brick for the erection of their building, which he says was then unfinished because of the want of brick to complete it. We prove by L. C. Osborn that the brick-work of that building was fully completed in 1862. 324

If the alleged conversation between Dickey and Blake was had at the time when the building of Osborn & Osgood was in process of construction—and that, he says, is the circumstance which enables him to remember the time—it must have been before defendants purchased, and if so, the conversation, if had, may have related to the arrangements contemplated by Blake and H. T. Taylor. Osborn's

testimony shows that the building was completed in
325 1862

Dickey's testimony further shows that the conversation with Blake was wholly with reference to R. W. Howland, and that the relations between the witness and Elliott had not been friendly. It is probable that Mr. Dickey is mistaken in the subject of that conversation; that in fact it was the brick-yard property so called, which Blake, at this very time was carrying for Richmond W. Howland, whose skill in producing testimony of this character, is shown in
326 his letter in evidence to John W. English, who is a witness testifying to similar admissions.

The testimony of Silas F. Lefler, another witness upon the subject of admissions, shows him to be upon terms of violent hostility to defendants, and he is substantially impeached by the witness F. W. Bruce. Lefler testifies that in his presence, Bruce asked Elliott what was his price for the Howland building, or what it was worth, and he said it was not theirs to sell, but supposed it was worth thirty
327 or thirty-five thousand dollars and carried the idea that all they wanted out of it was the money they had in it, viz., ninety-six hundred or ten thousand dollars; that he further carried the idea that he had to keep a separate account of receipts and expenditures in the building, because of an agreement between the parties. The attention of Mr. Bruce is called to this and he thereupon gives the following testimony:

"I do not remember any such conversation. I do not think such a conversation was ever had between

myself and Elliott, in the presence of Mr. Lefler or any other person. 328

Q.—If you had ever had such conversation with Mr. Elliott, would you be likely to remember it now?

A.—I think I should."

He then testifies to a conversation he did have with Mr. Elliott in June, 1865, in which the latter stated that Howland had no interest whatever in the building, and the witness does not think that he ever got from Elliott an impression that Howland had any interest in the property. 329

As an attempt to further corroborate complainant's claim, it is shown that the defendant Blake aided Richmond W. Howland in carrying certain brick-yard property, bidding it in at a Sheriff's sale, and holding it until again sold. It does not strengthen the complainant's case for it was a transaction for the benefit of Richmond W. Howland, and not complainant, and was moreover a trust simply, and fully carried out by Blake. We do not see how it helps to prove a certain arrangement concerning property with A. showing even a similar arrangement concerning other property with B. unless the circumstance that A. and B. are brothers is to be held controlling. 330

We submit that it is very probable from all the facts and circumstances of this case that the purchase of the brick-yard property by Blake in trust for Richmond W. Howland, and the conversation which Blake, H. T. Taylor, R. W. Howland and Isaac Taylor had, prior to the foreclosure sale about Blake and 331

H. T. Taylor purchasing the Howland block in trust for Richmond W. Howlond, and the conceded relation of mortgagor and mortgagee in possession existing between Isaac Taylor and the complainant from 1859 to 1862, and the frequent conversations relative thereto, is the foundation of all the testimony on the part of the complainant in this case. When Isaac Taylor assumed the relation of mortgagee in possession of part of the premises, the transaction was not
332 a secret agreement between R. W. Howland and himself; they called on Taylor's attorneys, Messrs. Strong & Fuller, and the agreement Ex. "B." was reduced to writing, all its terms and conditions were clearly expressed, and after being signed, sealed and witnessed it was acknowledged and recorded. Mr. Taylor assumed possession and talked freely about procuring tenants and obtaining rents and his efforts to help Howland to pay the amount due on his mortgage. Is there a circumstance in the history of this transac-
333 tion, or in the life of Mr. Taylor developed by the testimony, which would justify us in coming to the conclusion that he would make so important a contract as that sworn to by R W. Howland, without first consulting his legal adviser with reference to it? So too with Mr. Blake when he purchased the brickyard property for Howland, it was not a secret transaction, it was talked about freely. The same is true of the contemplated purchase of the Howland Block for R. W. Howland, it was frequently spoken of
334 without reserve, nothing was done in a corner, undoubtedly many persons knew of the contemplated

purchase, and it is easy to see how after eleven years these casual conversations may have been the foundation for the testimony of the admissions of Blake and Elliott in this case.

In determining the question whether a deed absolute on its face was given in fact as security for the paymant of money and is therefore a mortgage, the value of the property as compared with the amount paid or advanced by the grantee is regarded by all 335
courts as a circumstance of great weight. If the amount paid equals or nearly equals the value of the property, the inference is very strong that the transaction was a sale absolute, and not by way of mortgage. But if on the contrary it appears that the sum advanced by the grantee was much less than the property was really worth at the time, that is a strong circumstance tending to prove that the conveyance was made as security only.

Russell vs. Southard 12 How, 139, 148. 336

On the question of value the complainant offered evidence of the cost of the property. Richmond W. Howland testifying that the property cost about $24,000. Lucas Bradley and Thomas H. Davis testifying that they had estimated the probable cost of the building when erected, and in their opinion such cost was about $21,000. Wm. H. Jenks fixed the value at from $20,000 to $24,000, and M. R. Teegarden at from $18,000 to $20,000. This comprises all the testimony on the part of complainant 337
on the subject.

The witness Jenks showed by his testimony, that

H. T. Taylor purchasing the Howland block in trust for Richmond W. Howlond, and the conceded relation of mortgagor and mortgagee in possession existing between Isaac Taylor and the complainant from 1859 to 1862, and the frequent conversations relative thereto, is the foundation of all the testimony on the part of the complainant in this case. When Isaac Taylor assumed the relation of mortgagee in possession of part of the premises, the transaction was not
332 a secret agreement between R. W. Howland and himself; they called on Taylor's attorneys, Messrs. Strong & Fuller, and the agreement Ex. "B." was reduced to writing, all its terms and conditions were clearly expressed, and after being signed, sealed and witnessed it was acknowledged and recorded. Mr. Taylor assumed possession and talked freely about procuring tenants and obtaining rents and his efforts to help Howland to pay the amount due on his mortgage. Is there a circumstance in the history of this transac-
333 tion, or in the life of Mr. Taylor developed by the testimony, which would justify us in coming to the conclusion that he would make so important a contract as that sworn to by R W. Howland, without first consulting his legal adviser with reference to it? So too with Mr. Blake when he purchased the brickyard property for Howland, it was not a secret transaction, it was talked about freely. The same is true of the contemplated purchase of the Howland Block for R. W. Howland, it was frequently spoken of
334 without reserve, nothing was done in a corner, undoubtedly many persons knew of the contemplated

purchase, and it is easy to see how after eleven years these casual conversations may have been the foundation for the testimony of the admissions of Blake and Elliott in this case.

In determining the question whether a deed absolute on its face was given in fact as security for the paymant of money and is therefore a mortgage, the value of the property as compared with the amount paid or advanced by the grantee is regarded by all 335
courts as a circumstance of great weight. If the amount paid equals or nearly equals the value of the property, the inference is very strong that the transaction was a sale absolute, and not by way of mortgage. But if on the contrary it appears that the sum advanced by the grantee was much less than the property was really worth at the time, that is a strong circumstance tending to prove that the conveyance was made as security only.

Russell vs. Southard 12 How, 139, 148. 336

On the question of value the complainant offered evidence of the cost of the property. Richmond W. Howland testifying that the property cost about $24,000. Lucas Bradley and Thomas H. Davis testifying that they had estimated the probable cost of the building when erected, and in their opinion such cost was about $21,000. Wm. H. Jenks fixed the value at from $20,000 to $24,000, and M. R. Teegarden at from $18,000 to $20,000. This comprises all the testimony on the part of complainant 337
on the subject.

The witness Jenks showed by his testimony, that

he was not acquainted with the value of property, and was not a competent witness on that subject. The witness Teegarden seemed to be entirely ignorant of the relative rental value of property on the east and west sides of Main street, and as the other testimony in the case shows, was grossly mistaken in what he did state as to comparative values.

338 The testimony in the case shows, and indeed it is a part of the history of the country, that the financial crisis of 1857 had a direct tendency to reduce the value of all classes of real estate and especially city and village property; this was particularly true of the city of Racine, where other causes combined to produce such depression in real estate values, that from 1859 to the last of 1864 or the beginning of 1865 the best business property in the city could not be sold in many instances for one half its cost, indeed
339 it seemed impossible to sell real estate during those years for any price, even to save it from sacrifice, on moderate incumbrances. This is fully demonstrated by testimony to which we now call the attention of the court.

Henry S. Durand testifies that in the year 1860, 1861, 1862 and 1863 he had knowledge of the value of real estate in Racine used for business purposes; had owned and controlled ten or twelve pieces; that during those years there was no demand for such
340 property for investment, and if sold at all, it was sold for very much less than the improvements cost, if it was improved property. He had a block of brick buildings on Main street, which with the ground cost

him from twenty-two to twenty-five thousand dollars, which he could not sell to protect a mortgage of $8,000, and which was sold on foreclosure for less than $8,000. He had also an interest in warehouse property, which cost over twelve thousand dollars, and was sold for less than $5,000. He says that many mortgages were being foreclosed on business 341
property during those years, that the city indebtedness amounting to several hundred thousand dollars, stopped investments and depressed all values and business, and that there was very little improvement until after the close of the war, when the people started to liquidate the city indebtedness, and began extraordinary efforts to re-establish business. He testifies that in April, 1863, in his opinion, the value of the Howland Block property would be entirely nominal, ranging from $8,000 to $12,000, and de- 342
pending upon the interests which a purchaser might have had in the city.

Henry T. Fuller has resided in Racine since 1848, and commenced doing business for Mr. Isaac Taylor as his attorney in that year. He says that, from 1858 to 1866 the real estate market in Racine was greatly depressed, owing to the crisis of 1857, stagnation in business and demands of creditors upon business men for payment of amounts borrowed, and that the city indebtedness also had a material effect 343
upon property. He foreclosed mortgages between those years upon many pieces of business property, which he enumerates; says is was very difficult to sell property at all, and in some instances sales were

made for one-half the cost of the property. He further testifies that both he and Mr. Taylor agreed that the Howland block property was not ample security for the liens upon it, and that it was his impression that the property could not have been sold to any person except the mortgagee for $9,300 on
344 the 19th day of June, 1862.

E. G. Huggins, testifies; that he has bought and sold property in the block in which the Howland building is situated. In 1857 he sold a house and lot in that block for $1,000, and bought it back in February, 1864 for $200. That he sold a lot for $450 in 1856, and bought it back with a house on it in 1865 for $375. In 1866 he bought the hotel property known as the Baker House, situated in the same block with the Howland building; he paid for it
345 $6,700, which was less than one-half its cost. The witness says that its outside finish is not as expensive as that of the Howland block, but that the inside of the hotel, which is 70 feet front and four stories high, and the same depth as the Howland block, must have cost much more than the inside of the Howland block. In his opinion the fair market value of the Howland block in June, 1862, was about $8,000. Does not think a man could have been found at that time who would have paid $8,000 in cash for it; says
346 the business property in the block, in 1862 and 1863 would not sell for its cost, and there was no capital seeking investment in real estate in Racine in those years. That the city indebtedness at that time was $600,000.

John H. Palmeter says that he has been a dealer in real estate, and concurs with Mr. Huggins, saying further that in April, 1863, the Howland block would not sell for more than half its cost, and at that time $8,000 or $10,000 was its fair market value.

Thomas J. Emerson, an old resident of Racine, 347
testifies fully as to values of real estate in Racine from 1857 to 1865, and to the causes for the depression then existing. Says that the sale of the Howland block by Taylor to Blake & Elliott was the first of any note after the panic of 1857; that it was regarded a remarkably successful sale, and in view of the condition of the real estate market at that time, $10,000 was a high price to pay for it. He had dealt in real estate from 1845 to 1865.

Hermon Warner, a dealer in real estate in Racine, 348
testifies as do the other witnesses, and owned property in the same block in which the Howland building is situated; discontinued his real estate business in 1861, 1862 and 1863, because no sales could be made, and regards $10,000 as the fair value of the Howland block property in June, 1862 and April, 1863.

George Bull testifies to the condition of real estate in Racine from 1859 to 1863. About the year 1862 or 1863. he purchased business property, made payments of $1,500, lost the property on foreclosure 349
of a mortgage of about $4,000. The property sold for less than $3,000, leaving a judgment against him for deficiency of about $1,500. In 1861 Taylor offered him the use of one of the stores in the How-

land block for one year, free of rent, if he would move in and occupy it.

John Kranz gives similar testimony, showing the depression in real estate during those years.

Albert G. Knight has been acquainted with the
350 value of real estate in Racine for thirty-eight years; is of opinion that when Mr. Taylor purchased at the foreclosure sale, nine thousand dollars was as much as a man could afford to pay for the Howland block property, with view to selling it; and that in 1863 its value was about twelve thousand dollars. Mr. Knight has been a real estate dealer and conveyancer, and kept an abstract of titles in Racine for many years.

The defendants, Blake & Elliott, who have, especi-
351 ally Blake, been familiar with the value of real estate in Racine for many years, testify that they paid the full value of the property at the time they purchased, in April, 1863.

All this testimony to which we have thus referred, conclusively proves that ten thousand dollars was a fair market value for the property when the defendants purchased, and we submit further, that the price for which the property sold in June, 1862, at a sale open to all bidders, is the best test and evidence of
352 value at the time.

Testimony has also been given on the part of defendants, showing that Main street is the main business thoroughfare of Racine, and that the center of business is on that street between Second and Sixth streets; that the west side of Main street has

always been the natural side for business; that the business buildings upon that side of the street have always commanded higher rates of rent than those upon the east side, and that the extent of business, rate of rentals and values of property on the east 353
side have been by the circumstance of location, materially affected. This is established by the testimony of Henry S. Durand, John Elkins, Thomas J. Emerson, Hermon Warner, George Bull, F. W. Bruce, Elbridge G. Huggins, J. H. Palmeter, B. F. Weeks, A. O. Burch, John Tapley, John Kranz, Albert G. Knight, and Henry T. Fuller. It is in proof that the witness, Weeks, in 1865, removed from the store room he had rented in the Howland block to a store almost directly opposite, on the west side of the 354
street, paying a considerably higher rental, for the reason that the west side was more advantageous and better for business, and thinks the percentage of difference in the rates of rent in the two sides of Main street has been from thirty to forty per cent. A. O Burch, an occupant of one of the stores in the Howland block, testifies that he would have preferred to pay a large rent for a store on the west side of Main street than had one in the Howland block for nothing; and the reason why he had not 355
changed his location is because he could not obtain a suitable place on the other side of the street.

No comments will add to the force of this testimony.

Before closing our argument, however, we desire

to urge another consideration which we think entitled to great weight.

By the terms of the bond accompanying the mortgage from Eugene Howland to Isaac Taylor—in
356 case of an extension of the time of payment, the bond and mortgage were to draw twelve per cent. interest payable semi-annually. On the 10th day of August, 1861, the day the foreclosure was commenced, Isaac Taylor was in position to enforce payment of that rate of interest upon the whole sum then remaining unpaid, and had security, which by no proceeding in Court could be made more perfect or satisfactory, and which was prior and paramount to all other liens, except that of Daniel P. Rhodes. By proceeding
357 to foreclose his mortgage, under the arrangement claimed by Richmond W. Howland, he would place himself in the position, where he could recover no more than seven per cent interest, and could enforce payment of no greater rate, and would at the same time necessarily release and abandon all personal liability of Eugene Howland for the debt and upon his bond. Can it be believed for a moment that when, by granting an extension of time, as contemplated by the bond, Taylor could realize twelve per
358 cent. semi-annual interest, that he would make an agreement which should accomplish substantially the same thing, at a rate reduced to seven per cent. and continue such agreement in force for an unlimited period, and release whatever there was of personal responsibility in Eugene Howland? To our minds these considerations prove that Isaac Taylor desired

to terminate the relation of debtor and creditor between himself and Eugene Howland, and for that purpose only, commenced and prosecuted the foreclosure suit; and that he was anxious to dispose of 359
the property, after he had acquired the title, is conclusively established by the fact that he was willing and anxious to sell it to responsible parties on long time, and at seven per cent. interest.

We have thus argued the question of law and fact in this case, which must necessarily command the attention of the Court, in rendering a decision. Richmond W. Howland is clearly the instigator of the litigation. We have seen that in 1857, complainant made his bond and mortgage to Isaac Taylor, there- 360
in stipulating for such extensions of time for payment as he desired; he failed to pay his mortgage when due. To facilitate its payment he had placed his mortgagee in possession. Every means and facility were afforded him and his agent to pay the debt and keep the property. We have seen that the mortgagee regarded the security as not ample; that he took the most vigorous measures—by acquiring titles and otherwise—to protect and secure himself. That finally finding his debt steadily increasing, he 361
prosecuted foreclosure proceedings upon his mortgage, taking precisely the course of action which would be expected from a mortgagee, determined by necessary legal means to enforce payment of his debt. Decree of foreclosure is rendered—complainant not even appearing in the case. The mortgaged premises are sold under decree of the Court at public sale

to the highest bidder. That sale is confirmed; the purchaser then makes sale and conveyance to defend-
362 ants by warranty deed, containing full covenants; the defendants paying the full value of the property, borrowing money for the cash payment and giving their notes and a mortgage on the property to secure the balance.

Isaac Taylor is dead, and now when he cannot speak and after seventeen years have elapsed since the original mortgage was made, and after more than ten years since the defendants made their purchase, the agent of complainant upon complainant's bare
363 consent, files this bill to redeem the property, bases it upon the claim that during all this time the equitable title and interest has been vested in complainant; that after the foreclosure prosecuted by Taylor, and after judgment, sale, confirmation and deed thereunder, his mortgage remained a mortgage still, and that defendants have no title which they can hold against the complainant. And to establish the agreements said to have any legal force and effect, upon which this claim is based, the case rests upon the un-
364 supported testimony of the one witness, Richmond W. Howland, whose silence for ten years he explains only upon the theory that he promised Blake that he would not trouble him until the property had paid for itself, and according to the testimony of complainant he kept his promise so well that even the complainant was ignorant of it until June, 1873, when he was informed that the property had not only paid

all indebtedness of every nature, but had earned $10,000 besides.

If this claim can be sustained upon this testimony 365
and these circumstances, is not the inquiry pertinent, of what force and value are the most solemn judicial proceedings and upon what basis can the most solemn muniments of title to real estate rest?

It is understood between the counsel for the respective parties, that either party may give further testimony if necessary, as to the amount of rents received and moneys expended for taxes, insurance and repairs upon the property, but in view of the fact that it was claimed by Richmond W. Howland to 366
complainant, as complainant testifies, that the rents had paid all disbursements of defendants on account of the property, and some ten thousand dollars besides, we deem it proper to furnish the court with a statement showing the amount due on the first of January in each year, reckoned and computed in accordance with the contract alleged, as testified to by Horatio T. Taylor and Richmond W. Howland, and which Howland testifies Blake agreed to without change, except as to time. 367

Starting the account with the purchase money at ten thousand dollars, adding interest and the amount expended for repairs, and paid for taxes and insurance, and deducting total receipts each year, as shown

by the testimony, the account stands as follows:

January 1st,	1864—	due	defendants	....	$9,506	99
" "	1865	"	"	....	9,839	95
" "	1866	"	"	....	9,977	76
" "	1867	"	"	....	9,787	65
368 " "	1868	"	"	....	9,571	54
" "	1869	"	"	....	9,476	06
" "	1870	"	"	....	9,102	50
" "	1871	"	"	....	9,092	55
" "	1872	"	"	....	8,807	30
" "	1873	"	"	....	8,352	19
" "	1874	"	"	about	8,518	94

It will be found by examining the testimony, that the amount included in this statement, for repairs, is not precisely accurate; some items of repairs that
369 were made are not included, and no price is fixed on them by the testimony, and in one or two instances small charges are made for repairs which may have been made by Isaac Taylor shortly before the sale to defendants, the value of the last mentioned items of repairs made by Taylor, being insignificant.

The rent for 1873, in stating the amount due defendants January 1st, 1874, is estimated at $2,100; the amount of such rent received to the time of filing the bill as shown by the testimony being $1,020.

JOHN T. FISH,

Solicitor for Def'ts.

Supreme Court of the United States.

No. 289.

EUGENE HOWLAND, *Appellant*,

VS.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT.

RESPONDENTS' BRIEF.

JOHN T. FISH,
Appellees' Att'y.

Journal Steam Print, Racine, Wis.

Supreme Court of the United States.

No. 289.

EUGENE HOWLAND, *Appellant,*

vs.

LUCIUS S. BLAKE AND JAMES T. ELLIOTT,

Respondents.

STATEMENT.

On the 1st day of July, 1873, the appellant filed his bill of complaint in the court below, to redeem lot 12, block 18, in the 1st ward of the city of Racine from a certain mortgage, bearing date October 21st, 1857, executed by the complainant to one Isaac Taylor.

The conceded facts of the case may be briefly stated as follows:

On October 21st, 1857, the appellant borrowed from Isaac Taylor seven thousand dollars, which sum he agreed to repay, with ten per cent. interest, on the 1st day of January, 1860, and to secure such payment, he, at the same time executed and delivered to Taylor, his certain bond for said amount, with an indenture of mortgage, conveying lots 4 and 12, block 18, 1st ward of Racine.

The appellant at the time of the loan was erecting a building on lot 12, which was completed in the year 1859, and to further secure such loan, Taylor was let into possession under an agreement to collect the rents and apply them to the payment of the interest and principal of said debt.—Complt's Ex. C., p. 59.

On the 24th day of January, 1860, Taylor by deed released lot 4 from the lien of said mortgage.

Wiltsie & Hetrick had furnished appellant with materials which were used in the erection of said building, for which appellant failed to pay, and they filed a lien upon the building and interest of appellant in lot 12, and proceeded by action in the Circuit Court for Racine county to foreclose said lien, and such proceedings were had that, on May 22nd, 1860, the interest of appellant in said premises was sold by the Sheriff of Racine county, pursuant to a decree of said court, to Daniel P. Rhodes, for the sum of one thousand dollars, which sale was reported to the court and duly confirmed on the 8th day of August, 1860. (f. 659.)

On the 10th day of August, 1861, Isaac Taylor commenced an action in the Circuit Court for Racine county, to foreclose his mortgage, which action was prosecuted to final judgment on the 26th day of February, 1862; the appellant's agent being called as a witness to show the amount due on the mortgage. On the 17th day of June, 1862, the Sheriff of Racine county, pursuant to said judgment of foreclosure, sold said premises at public auction, to Isaac Taylor for the sum of $9,300, which sale the sheriff reported to the Court, on August 5th, 1862, and the same was confirmed by an order entered on that day. (f. 622.)

On July 23rd, 1862, Taylor purchased from Daniel P. Rhodes his interest in said premises and obtained a quit claim deed therefor.

On July 7th, 1862, Taylor conveyed to one Clement by

warranty deed, an alley and an interest in one of the walls of the building.

On the 18th day of April, 1863, he conveyed the balance of said premises to the defendants by warranty deed, for the consideration of ten thousand dollars, the defendants paying two thousand five hundred dollars down, and giving to Taylor their ten promissory notes for seven hundred and fifty dollars each, payable semi-annually, with seven per cent. interest, all of which notes were secured by a mortgage on the premises, and were paid by the defendants. Upon the execution of the deed by Taylor to the defendants, they entered into possession and have enjoyed the rents and profits of the premises without molestation; until this bill was filed, neither the complainant nor any person in his behalf has claimed any title or interest in the premises, or spoken to either of the defendants about the rents, repairs, or occupation of the premises, or about any title or interest of the complainant therein.

The appellant by his bill of complaint alleges in substance, that after Taylor had commenced his suit in the State Court to foreclose said mortgage, it was agreed between appellant and Taylor that the former should waive and forego all defense and delay in the prosecution of the suit, and all right of appeal from the judgment to be rendered therein, and allow Taylor to remain in possession of said premises, and in consideration of such agreement, Taylor agreed to continue in possession, and to bid in the premises at the sheriff's sale, to take a conveyance thereof from the sheriff; and to hold the same and the possession of the premises merely as security, for the payment of the mortgage debt; to receive and apply the rents of said premises to the payment thereof, and when the same should be paid, to reconvey said premises to appellant; and that the defendants knew of such agreement, and agreed to and did advance the money due Taylor, and took from him a warranty deed of the premises, in form to secure repayment by appellant of the amount advanced by defen-

dants to Taylor, and that defendants agreed to reconvey to appellant when the rents should pay such sum. (ff. 5 to 10.)

The defendants by their answer, put in issue all these averments of the bill of complaint, and allege that Isaac Taylor had an absolute title to the premises, and that they had no knowledge or information of any agreement to hold the property as security for the amount due on his said mortgage; and allege further that they purchased said property absolutely for the sum of ten thousand dollars, without any agreement to reconvey to appellant on any terms whatever. Isaac Taylor died about 1865.

Upon the hearing, the Circuit Court dismissed the bill.

The judgment of the Circuit Court may be affirmed on either of the following grounds:

First: The complainant had no equity of redemption in the premises after the 22nd day of May, 1860.

Second: Parol evidence was not admissible to prove the alleged agreements.

Third: The evidence does not establish such agreements.

ARGUMENT.

I.

The complainant had no equity of redemption in the premises after May 22, 1860.

The complainant on March 27th, 1857, had the title as appeared of record to lot 12, block 18, 1st ward of Racine, and on and between that day and November 10th, 1857, made purchases of materials from Wiltsie & Hetrick, to be used in the erection of a building on said lot, and which were so used, to the value and amount of $826.83.

By sec. 1. ch. 153 of the revised statutes of Wisconsin, Wiltsie & Hetrick had a lien upon the building and the inter-

est of complaint in the lot, prior to any other lien which originated subsequent to the commencement of the erection of such building. This lien was prior to the mortgage to Taylor, from which the complainant now seeks to redeem. Wiltsie & Hetrick took the ordinary proceedings in court to foreclose such lien, as will appear from the judgment-roll in that action, which will be found in the record, commencing f. 624, p. 265 and ending at f. 659, p. 280. These proceedings culminated in a decree adjudging that the plaintiffs had a lien on all complainant's interest in said lot, on March 27th, 1857, and directing that the same be sold by the sheriff of Racine county, at public auction. Under that decree, the sheriff sold the property on May 22nd, 1860 to one Daniel P. Rhodes, for the sum, of $1,000, (f. 525, p. 221, to f. 535, p. 225.) The sale was reported to the court and confirmed on the 8th day of August, 1860, by an order found at f. 659, p. 279.

Section 11 of ch. 153, R. S. of Wisconsin, 1858, declares the legal effect of the foregoing proceedings as follows: "And such officer shall give to the purchaser a deed of convey-"ance of the premises sold, which shall be valid and effectual "to pass all the right, title, and interest of the defendant in "and to said premises absolutely, whether the same be held "in fee simple, for life or for years."

This conveyance passed the entire interest of Howland in the premises to Rhodes, and there is nothing in the record to show that Howland ever afterwards became possessed of any interest therein.

Leaving out of view the foreclosure of the mortgage, Taylor was in possession under an agreement to collect the rents and apply them to the payment of the principal and interest of his mortgage debt. (ff. 45, 64, 65.) Complainants Ex. C., p. 59. The paper writing must be held to contain the agreement of the parties. Jarvis v. Palmer, 11 Paige 650. It was Taylor's duty to apply the rents to the payment of his debt, and to this extent only was he the trustee of Howland.

He might purchase an outstanding prior lien and get an irredeemable title.

Kirkwood v. Thompson, 2 DeG., J. & S. 613, and cases cited.

Parkinson v. Hamburg, 2 D. & S., 143, S. C., 2 DeG. & S., 450.

Knight v. Majorbanks, 2 Mac N. & G., 10.

Shaw v. Bunny, 2 DeG., J. & S., 468.

TenEyck v. Craig, 62 N. Y., 406–420.

1 Jones on Mortgages, 711, 713.

Walthall v. Rives, 34 Ala., 91–96.

Harrison v. Roberts, 6 Florida, 711.

Cholmondeley v. Clinton, 2 Jac. & Walk., 181.

2 Washburn on Real Prop., 160.

Sturdevant v. Mather, 20 Wis., 615.

Wright v. Sperry, 25 Wis., 620.

Williams v. Townsend, 31 N. Y., 415.

It appears affirmatively by the testimony of R. W. Howland that the Wiltsie & Hettrick claim was not charged to Howland by Taylor, aud was not included in the judgment against him. ff. 74, 75.

II.

Parol evidence was not admissible to prove such agreements.

The mortgage from which the complainant seeks to redeem was regularly foreclosed in the Circuit Court for Racine County. f. 547, p. 230.

The complainant seeks to defeat such foreclosure by showing a parol agreement between Taylor and himself made pending the suit, that such proceedings should not affect complainants right to redeem. The agreement is stated by R. W. Howland at f. 48. p. 18.

There were no liens or incumbrances on the property except the deed to Rhodes given on the sale upon the Wiltsie & Hetrick judgment. There was no defence to the action and no claim of a defence. The only possible purpose and effect of the proceedings was to terminate the relation of mortgagor and mortgagee existing between the parties, by transferring their right and title in the premises to the purchaser at the foreclosure sale.

The only possible object of the evidence offered was to contradict the record by oral stipulation of the parties made pending the suit.

The judgment estops the complainant from denying that the mortgage was foreclosed.

Griffith *et. al.* v. Bogart, 18 How., 158–161.

Lamp Chimney Co. v. Brass & Copper Co., 1 Otto, 656–661.

Sweet v. Mitchell, 15 Wis., 641, 661.

Mary Wichalfe &c. v. John Short, 3 Browns Par. Cas., 558.

In Sweet v. Mitchell the Supreme Court of Wisconsin held that where a party had the title to property by way of mortgage, and the mortgagor made a release of the equity of redemption to the mortgagee oral evidence of an agreement that the mortgagor should still have the right to redeem was inadmissible.

The counsel for appellant has been very industrious in searching for authorities, but he has failed to find a case holding such evidence admissible. The cases cited in his brief are all distinguishable from the case at bar.

In none of the cases cited was there any attempt to keep in existence the equity of redemption through a foreclosure.

The complainants evidence tends to prove an agreement at varience with the judicial proceedings and the deed made in pursuance thereof. He does not offer to show any facts or circumstances showing that the parties met and negotiated

on the footing of borrower and lender, and where no such facts and circumstances exist a deed absolute on its face cannot be converted into a mortgage by parol evidence of an agreement that it should be such.

White & Tudors Leading Cases in Eq. Vol. 11, Part 11, 1990, and cases cited.

Peugh v. Davis, in this Court, Oct. term, 1877.

4 Kents Comm., 143, Note 2.

It is obvious that no such circumstances can exist where there is an action to foreclose a mortgage, for there the necessary effect of the proceedings is to terminate the relationship of mortgagor and mortgagee, and to apply the property to the payment of the mortgage debt.

White & Tudors Leading Cases in Eq. Vol. 11, Part 11, 1996, and cases there cited.

McKinstry v. Conley, 12 Ala., 678.

The rule adopted by the learned Circuit Judge in this case is the only safe rule. He says: "Now in this case, if the party is entitled to relief at all, it is because things were unchanged, and the title was no more than it had been; it was still a mortgage. I do not feel inclined to hold, in a case such as this, where a mortgagee forecloses his mortgage and the equity of redemption is ended, by the decree of a competent Court, and he has taken an absolute title to the property, that he is still a mortgagee. And it seems to me, that the case in itself constitutes a very strong illustration of the propriety of not enlarging the rule which already exists, and which enables a party to show that a deed absolute on its face is nothing but a mortgage.

The result would be that parties could go on without limit, and it might in effect be said that there never could be a foreclosure of the mortgage. Deeds might be made, foreclosures take place, and still it would be a mortgage. I am entirely willing to place the decision upon what is alleged to be the arrangement made between Mr. Taylor and Mr. Richmond

W. Howland, and to say that it is not of such a character as to enable a party by parol to show that it was simply a mortgage, or simply a security for a debt."

Unless the relation of mortgagor and mortgagee is established between Howland and Taylor, the evidence is not admissible.

Sec. 6, Chap. 106, R. S. of Wisconsin.
Sec. 8, Chap. 106, R. S. of Wisconsin.
Richardson v. Johnson, 41 Wis., 100–104.
Payne v. Patterson, 77 Pa. St., 134.
Whiting v. Goold, 2 Wis., 552, 582.
Bander v. Snyder, 5 Barb., 63.
Lathrop v. Hoyt, 7 Barb., 59.
Smith v. Bouck, 33 Wis., 19, 34.
2 Story's Eq. Jur., § 1201 A.
Rasdal's admr. v. Rasdal, 9 Wis., 379.

III.

The evidence offered if admissible does not prove such agreements.

In considering the nature and sufficiency of the evidence required to convert a deed absolute on its face into a mortgage the Supreme Court of Wisconsin held that the proof must be clear and convincing, leaving no reasonable doubt in the mind of the court, and expressed a doubt whether in any case after the death of the grantee the unaided testimony of the grantor alone, however intelligent and credible he might be as a witness, should be held sufficient to set aside the deed or invalidate the title claimed by it. "It would be a dangerous precedent to establish."

Kent vs. Lasley, 24 Wis. 654.
McClellan vs. Sandford, 26 Wis. 246.
Harter vs. Christoph and another, 32 Wis. 246.

The same and no less convincing proofs are required than are necessary to authorize the reformation of a written contract on the ground of mistake. If the proofs are doubtful and unsatisfactory and the mistake is not made entirely plain, equity will withhold relief.

Bryan v. Cowart, 21 Ala., 92.
Cook v. Gudger, 2 Jones' Eq., 172.
1 Story's Eq. Jur., § 152.

Examining the testimony of appellant we find that he must rely solely upon the testimony of Richmond W. Howland to establish the terms and conditions of the contract. He says that he and Taylor were alone at the time the contract was made, and Taylor is dead. At that time Taylor was in possession of the premises under a written instrument similar to to the one given to Hardy. Complainants Ex. "C," p. 59, the terms of which were agreed upon and then reduced to writing. (ff. 45, 64, 65, 66.) The bond and mortgage drew ten per cent. interest and twelve per cent. after due. (f. 594, p. 253.)

The debt became due Jan'y 1, 1860, and suit was commenced August 10, 1861, (p. 235), and on Feb'y 26, 1862, there was due on the bond and mortgage $8,866.82. (f. 597, p. 253.) This did not include the Wiltsie & Hettrick lien. (f. 75.) R. W. Howland stated the contract relied upon to defeat the foreclosure as follows:

"Shortly after the suit was commenced, I called on him (Taylor), with reference to the foreclosure, at which time he assured me that the plaintiff's interest—that is, Eugene Howland's interest—in it, should not be affected by it. That he only commenced the suit for the purpose of perfecting the title. He also said he would carry out in good faith all arrangements he had made previous to that. He agreed to bid in the property for the amount due on the judgment, and I was not to make any delay in the suit. He was to continue in possession and apply the rents and earnings as he had done

previously; after the debt was paid the property was to revert to the plaintiff. There was to be a conveyance made to him." (f. 48, p. 18.)

The witness at ff. 50, 70, shows that no such arrangement was made. He testifies that he was endeavoring to induce Blake and H. T. Taylor to buy the property at the sale and hold it for six years, and offered H. T. Taylor $200 a year and ten per cent. interest to carry the property. This he would not have done if he had an arrangement with Taylor to carry the property with simple interest only.

Witness says there were no liens on the property except the deed to Rhodes, based on the Wiltsie & Hetrick lien. (f. 67.) And that he never informed the complainant of such arrangement until June, 1873. f. 77.

Appellant relies on the evidence of the following witnesses to show admissions of Taylor.

H. T. Taylor, p. 32.
Wm. H. Jenks, p. 37.
M. R. Teegarden, p. 41.
A. P. Dutton, p. 66.
Jno. W. English, p. 68.

The evidence of all these witnesses is subject to the objection that it was given more than eleven years after the alleged speaking of the words. "*It is always unsafe to rely on the uncertain recollection as to the existence of a conversation which is to impair the title to real estate.*"

Padgett v. Lawrence, 10 Paige, 181.
Dreher v. Town of Fitchberg, 22 Wis., 675.
Law v. Merrills, 6 Wend., 277.
1 Greenleaf on Ev., 200. Redfield's Ed., where Judge Redfield concludes as follows: "We must conclude there is no substantial reliance upon this class of testimony."

And further, that if the words were spoken while Taylor was in possession as mortgagee prior to the foreclosure, they are consistent with all the admitted facts and with his having the absolute title after foreclosure. It is also subject to the explanation given it by the Circuit Court. (p. 124 of appellants brief.)

The appellant also relies upon the evidence of *James H. Kelley*, showing that Taylor kept an account Dr. and Cr. with the Howland Block, commencing Jan'y 1, 1863. But this account shows that Taylor credited no rents from Feb'y 1862, to Jan'y 1, 1863, and charged interest at 7 per cent. on the investment, and sold for a profit of about $635. This account differed in no particular from Mr. Taylor's accounts with his other property. (pp. 48 to 51.)

On this question the appellees call attention to the following facts:

Mr. Taylor at the time had the personal bond of Eugene Howland, drawing twelve per cent. interest ten days after due, secured by a mortgage on the premises with the possession, which was surrendered and cancelled (f. 219). Taylor incurred an expense of $235.97 in foreclosing the mortgage (f. 618).

Taylor did not notify his confidential adviser of any such agreement (f. 269).

Taylor was always particular to put all agreements in writing (ff. 342, 343, 362, 271, 64, 65), and this agreement is alleged to be in parol.

Taylor offered to sell the property to Burch & Bruce (f. 258). He deeded, with covenants of warranty a portion of the property to Clement (f. 517), and the balance to the appellees (f. 661). He gave no information to Elliott (f. 304), (Durham f. 276, Fuller 269), that Eugene Howland had any interest whatever in the premises at the time of the foreclosure, or at the time of deeding to Blake & Elliott. He

told Elliott in the presence of Bruce that the title was good, and furnished an abstract showing the title perfect (f. 302, 304, 340).

In determining whether a transaction is a deed or mortgage the value of the property is of controlling effect (Russell & Southard, 12 How. 139, 48).

The amount bid at the foreclosure sale was the full value of the property.

The complainants testimony consists principally in estimates as to the cost of the building and the rent that it had produced.

Wm. H. Jenks (ff. 95-99), Thomas H. Davis (ff. 129, 130, 136), stated the value of the property in their judgment. Their entire testimony shows that they were not qualified to speak on that subject, and it is evident that they were giving such estimates from their present knowledge of the occupation and present value of the property.

M. R. Teegarden estimated the value of the property at from $18,000 to $20,000. This witness was entirely ignorant of the relative rental value of the property on the two sides of the street (f. 107), and his testimony is contradicted on that point by Weeks (f. 251), Bruce (ff. 296, 297), Knight (f. 340), Emerson (f. 280), Burch (f. 256), Elkins (f. 354), Kranz (f. 239), Bull (f. 290), Huggins (f. 242), Warner (f. 285), Elliott (f. 306), Palmeter (f. 248).

APPELLEE'S TESTIMONY.

E. G. Huggins as a witness, who had owned four pieces of property on the same side of the street and in the same block, and had dealt in real estate in Racine for twenty-six years, placed the value in 1862 at from $7,000 to $8,000, and

bought a building in 1866, with ten feet more front, within seventy feet of this building, which cost as much as the Howland Block (f.f. 241, 363, 379), for $6,700.

John H. Palmeter whose principal business for the past 28 years had been that of buying and selling real estate in Racine, fixed the value in 1863 at from $8,000 to $10,000 (f.f. 247-250).

Henry T. Fuller, an attorney, who had bid in for clients eight or nine pieces of property on Main street, and had experience in trying to sell the same, and who had resided in Racine from 1848, testified that the property could not have been sold for $9,300 at the time he bid it in for Mr. Taylor (f. 270).

Thomas J. Emerson, who from 1845 to 1865 dealt to a considerable extent in real estate in Racine, for himself and for others, says the sale to Blake & Elliott for $10,000 was considered a chance sale. It was generally looked upon as a very successful sale for Mr. Taylor to make. It sold high (p. 280). This witness shows that several buildings were vacant in the same street (ff. 279, 283).

Hermon Warner testified that from 1855 to 1860 and from 1863 to 1873 he was engaged in selling, renting and dealing in real estate in Racine; that $10,000 was all the property could have been sold for in 1863 (ff. 284, 285).

George Bull testified to the great depression in real estate in Racine in 1862-63 (f. 291).

James T. Elliott testified that $10,000 was all he regarded the property worth at the time he bought it (f. 307).

Albert G. Knight testified that he had been a real estate and loan agent in Racine for 38 years, and kept an abstract office, that the value in 1862 when Taylor purchased was about $9,000; that the price from that time on was gradually rising; that he talked with parties about it and thinks it was the general opinion that the Howland Block was worth about

$12,000; thought that $9,000 was as much as he would give for it or advise any one to give for it on speculation (f. 342).

Henry S. Durand had lived in Racine for 30 years, and had a general knowledge of the value of real estate. He says that he had a block of buildings on the corner of Main and Third streets which cost from $22,000 to $25,000 which he tried hard to sell to protect a mortgage of $8,000, but was unable to make the sale, and it sold for less than $8,000. He states that the Howland Block was worth from $8,000 to $12,000 depending upon interests the purchaser might have in the city (ff. 357, 369).

It is more important to ascertain what the parties interested regarded the value of the property to be.

Taylor and Mr. Fuller talked over the matter and agreed that the property was not ample security for the liens upon it.

The complainant told George Q. Erskine, in 1859 or 1860, that he had sent money from California, and Richmond had put it into that block, and it was all lost. (f. 474.)

Eugene Howland testified that he furnished about $1,700 that went into the block, that Richmond thought he did not put in so much; that he received the summons and complaint in the foreclosure case of Taylor against him, and the papers, which he destroyed; and that he never wrote or made any inquiry about the property from that time, and never heard that he had any interest in it until 1873 (f. 507), when he learned it from Richmond W. Howland, who said that the property had paid for itself and $10,000 besides (f. 509). See f. 82.

The conduct of Richmond W. Howland is utterly inconsistent with the existence of the alleged agreement with Taylor. He tried to make an agreement with Blake and H. T. Taylor (ff. 84, 341) to buy the property in trust for him at the sale, and offered them a bonus of $200 a year over and above ten per cent. He never spoke to Elliott about any such agree-

ment, although he knew he kept the books of Blake & Elliott and was interested in the purchase (f. 72). He never in any manner communicated to Eugene Howland, the complainant, that he had any interest in the property until June, 1873, when he told him that the property had paid for itself, and there was due him $10,000 besides from Blake & Elliott (f. 599). Upon which the complainant consented to have suit brought, and they talked over the amount Eugene had put into the property, and Richmond thought it was less than $1,700 (f. 508).

The entire testimony in the case is consistent only with the fact of an absolute foreclosure of the mortgage. The circumstances bear strongly upon the case. The prospect of a railroad had caused wild speculation in real estate prior to 1856. In 1859 the railroad company failed, leaving the city burdened with a debt of about $600,000 (f. 241). Taxes were not levied to pay the interest on the debt. It became apparrent that the city would never be a grain market nor a commercial town. Quite a number of business men moved away (f. 360). Large portions of the business property were sold at forced sale. Strong & Fuller alone foreclosed mortgages on nine pieces of business property on Main street between Third and Fifth, where the property in question is located (ff. 266, 267). The Durand building, north on the side of the street, a block and a half away,—the Baker House south and on the same side of the street within a hundred feet, each costing as much as the Howland Building, (f. 240), were vacant, and were in the market for sale, and sold for less than $8,000 each. The Baker House now rents for more than the Howland Block (ff. 246, 307). The Howland Building required repairs, including a new roof, which were made in 1864, at an expense of $657.44 (f. 21.)

It is true the building was at that time rented for $1,773.70 (f. 307), but there was no reasonable prospect that it would continue to be occupied. There were many vacant buildings on the same street within a block of it. See testimony of

Kranz, Emerson, Palmeter and Bull (ff. 339, 281, 250, 290, respectively).

Mr. Taylor had a keen appreciation of all these facts. He told Mr. Emerson that he was apprehensive that he would loose considerable money and spoke exultingly of his having filled the building with tenants and sold it to responsible parties (f. 281). He evidently prized the personal responsibility of Blake & Elliott, or he would not have taken their notes at seven per cent. and one note at thirty months without interest.

If the judgment is not conclusive as to the foreclosure of the mortgage it is the strongest possible evidence of such foreclosure.

The evidence does not show knowledge on the part of apellees of the alleged agreement between the complainant and Isaac Taylor.

In considering the testimony bearing upon this question we should keep in mind the situation of the parties at the time of Blake & Elliott's purchase of the property, and all the known facts in the case.

Blake & Elliott were entire strangers to the complainant. L. S. Blake had purchased at foreclosure sale the property of Jeptha Howland and Mr. Jenks in trust for Richmond W. Howland, and was holding it at that time. Isaac Taylor had been a mortgagee in possession of the Howland Building from 1859 to June 1862, which fact was well known in the community.

Mr. Blake and Horatio T. Taylor, friends of Richmond W. Howland, had been requested by him, and had contemplated, purchasing the Howland Building at the foreclosure sale in trust for Richmond W. Howland at about $9,000. Which fact was well known, and talked about in the community.

Richmond W. Howland fails to state any fact from which the inference can be drawn that he ever informed Mr. Blake

that the foreclosure by Mr. Taylor was not an absolute foreclosure of the mortgage. It is true that he details the effort which he made to induce Mr. Blake and H. T. Taylor to take title to the property at the foreclosure sale, and he testifies that he made an arrangement with Blake to purchase the property from Taylor and hold it in trust for the complainant, and assigns as a reason why he applied to Blake that he and Blake were friends, and that he had a similar arrangement with Blake about the brick yard property. He testifies that he never spoke to Elliott about the purchase, and never recognized him in the transaction although he knew that he had purchased a half interest in the property with Blake, and that he never informed the complainant of his interest in the property until June, 1873, *when his brother consented to have suit brought* f. 509. ✓ 77.

H. T. Taylor details in his own language the imperfected arrangement between himself, Blake, and Richmond W. Howland, with reference to Blake and himself taking title to the Howland Building at the foreclosure sale in trust for Richmond W. Howland (f. 93), from which it clearly appears that the conversation referred to Richmond W. Howland.

A. R. Burdick testifies to a conversation with Mr. Blake, in which Blake stated that he had bought the Howland Building, and that Howland had the right to redeem, or a chance to redeem, or something to that effect. On cross-examination (ff. 156, 157, 158) the witness says that the Howland referred to was Richmond W. Howland, and that Blake spoke of his being a good fanning-mill peddler and a good agent for making collections, or something of that sort.

It is manifest that if this witness ever had any conversation with Blake, it was at the time when Blake and H. T. Taylor contemplated purchasing the property for Richmond W. Howland.

The testimony of Albert P. Dickey, of a conversation with

Blake, is fixed at a time in the spring of the year when Osborn & Osgood's Block was being put up, which was up to the first story at that time, and the conversation commenced by Mr. Blake's telling him about loaning brick to Osborn & Osgood.

This block was commenced early in the spring of 1862 and fully completed in October, 1862. (Testimony of Lewis C. Osborn, p. 197.)

This witness says that Blake claimed to have purchased the property for Richmond W. Howland. This conversation, if it ever took place, was at a time prior to the sale or foreclosure, and at a time when Mr. Blake had no interest in the property. It will also be observed, by Mr. Dickey's testimony, that they were also talking about carrying the brick-yard property and loaning money to Richmond W. Howland to burn brick.

A. P. Dutton testifies to conversations with Taylor and Blake in which Blake said that he was holding the property for Richmond W. Howland.

John W. English testifies that he had a conversation with Blake about buying Howland Building in 1862.

Ellen M. Howland testifies to conversation with Blake at about the time Blake & Elliott bought the property, states that Blake promised to take the Howland Building in trust; that she wished him to take the property because she was acquainted with him and had lived in his family; that Blake said her husband's salary was no more than sufficient to support his family. Her whole testimony shows that the conversation related to taking the property in trust for Richmond W. Howland pp. 81, 82.

S. F. Lefler testifies that he had a conversation with Blake: that Blake told him that himself and Elliott were carrying the Howland Building; that it would pay for itself if the rents kept up, so that Howland or the Howlands would get it back

in ten years or so, and testified to a conversation between F. W. Bruce and Elliott with reference to the property. It is evident from the testimony of Lefler that Richmond W. Howland was the person referred to in the conversation ff. 208, 215.

The direct evidence on the part of appellees is in substance as follows:

Lucius S. Blake testifies that the proposed arrangement between himself and H. T. Taylor with reference to the Howland Building was that it should be held for the benefit of R. W. Howland. Eugene Howland was not known in the proposed transaction.

Never had any talk with Isaac Taylor or R. W. Howland, after foreclosure sale, about taking the title to the property for the benefit of Howland or for any person other than himself and Elliott. Never heard from any source that Isaac Taylor had an agreement with Eugene Howland or R. W. Howland to hold the property until the rents paid the indebtedness and then reconvey to Howland. The purchase contemplated in the conversation between Mrs. Howland and myself and between H. T. Taylor, R. W. Howland and myself was to be for the benefit of Richmond W. Howland.

Never had any conversation with S. F. Lefler in which I told him that Elliott and myself were carrying the Howland Block for Howland. Never had any conversation with A. P. Dickey or J. W. English about carrying the Howland Block for Howland, nor had I any such conversation with A. P. Dutton. p. 159–177.

James T. Elliott testified: I never heard from any source until this suit was brought, that the complainant or R. W. Howland had or claimed to have any interest in the premises. That he never heard from any source that Taylor did not have an absolute title to the property. That he knew R. W. Howland intimately, and that he never in any way alluded to any such arrangement. That he never had a conversation with

Dickey in which he said that he and Blake had paid Taylor's claim and proposed to help Howland redeem, and that he never had any conversation with Lefler about the building or rents, and that he had frequently offered his half of the store for $7,500, and never asked any more. That Blake and himself temporarily borrowed the $2,500 paid down to Taylor on the purchase, and gave ten promissory notes of $750 each, payable six months apart. That Taylor told him in the presence of Bunce that the title was good, and furnished him an abstract (ff. 301, 329, 465, 467).

Charles L. Bunce testified that he was present at the conversation between Elliott and Taylor at the time of the bargain, and that Taylor told Elliott that the title was good, and that Taylor figured the rent at about $1,700, and told him that it was a good investment, setting aside the rise in the value of the property.

Warren F. Durham testified that he drew the papers between Taylor and Blake & Elliott and a part of the papers in the foreclosure case; that he knew Taylor, Blake and Elliott intimately; that he had frequent conversations with Taylor about the foreclosure and never heard anything before, at the time of the foreclosure or afterwards, or at the time of drawing the papers about Eugene Howland's having any interest in the property foreclosed on the happening of any contingency, and never received any knowledge or intimation that the sale to Blake & Elliott was not absolute and unconditional (ff. 276, 279).

Taylor's conduct with reference to the property, heretofore referred to, tends to sustain the testimony of the defendants.

The testimony of the complainant, as to what transpired between him and Richmond W. Howland in June 1873, in which he was informed for the first time that he had an interest in that property and was told by Richmond W. that the property had paid for itself and $10,000 more, is entirely inconsistent with the existence of such agreement.

F. W. Bruce's attention being called to the testimony of Mr. Lefler says, he does not think such conversation was ever had with Mr. Elliott (f. 453).

It is submitted that it is very probable from all the facts and circumstances of this case that the purchase of the brick-yard property by Blake in trust for Richmond W. Howland, and the conversation which Blake, H. T. Taylor, R. W. Howland and Isaac Taylor had, prior to the foreclosure sale, about Blake and H. T. Taylor purchasing the Howland Block in trust for Richmond W. Howland, and the conceded relation of mortgagor and mortgagee in possession existing between Isaac Taylor and the complainant from 1859 to 1862, and the frequent conversations relative thereto, is the foundation of all the testimony on the part of the complainant in this case.

The following are the statutes referred to above:

Section 6, Ch. 106, R. S. "No estate or interest in lands, "other than leases for a term not exceeding one year, nor any "trust or power over or concerning lands, or in any manner "relating thereto, shall hereafter be created, granted, assigned, "surrendered or declared, unless by act or operation of law, "or by deed or conveyance in writing, subscribed by the party "creating, granting, assigning, surrendering or declaring the "same, or by his lawful agent, thereunto authorized by writing."

Section 8, Ch. 106. "Every contract for the leasing for "a longer period than one year, or for the sale of any lands "or any interest in lands, shall be void unless the contract, or "some note or memorandum thereof, expressing the consider-"ation, be in writing, and be subscribed by the party by whom "the lease or sale is to be made."

Section 1, Ch. 153. "Every dwelling house or other "building hereafter constructed, erected, repaired or removed "all machinery hereafter erected in such a manner as to "become a fixture within the State of Wisconsin, together

"with the right, title and interest of the person or per-
"sons owning such dwelling house, building or machinery,
"in and to the lands upon which the same shall be situated,
"not exceeding forty acres, or if in the limits of any incorpo-
"rated city or village plat, the lot on which such dwelling
"house, building or machinery shall be situated, not exceed-
"ing one acre, shall be subject to the payment of all debts
"contracted for, or by reason of any work done or any ma-
"terial found or provided by any brick-layer, stone-cutter,
"mason, lime merchant, carpenter, plasterer, painter and
"glazier, lumber merchant, iron monger, plumber, electrician,
"gas fitter, tinsmith or any other person employed in erecting
"or furnishing materials, in the erection, construction, protec-
"tion or repairing or removing of such dwelling house,
"building or machinery, before any other lien which origin-
"ated subsequent to the commencement of such house,
"building or repairs or removal."

JOHN T. FISH,

Solicitor for Appellees.